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DEEPWATER PORT ACT AMENDMENTS OF 1984

(98-49)

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 2353

TO AMEND THE DEEPWATER PORT ACT OF 1974, AND FOR OTHER PURPOSES

FEBRUARY 22, 1984

Printed for the use of the
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98TH CONGRESS
1ST SESSION

H. R. 2353

To amend the Deepwater Port Act of 1974, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1983

Mr. BREAUX (for himself, Mrs. BOGGS, Mr. HUCKABY, Mr. LIVINGSTON, Mr LONG of Louisiana, Mr. MOORE, Mr. ROEMER, and Mr. TAUZIN) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation

---

A BILL

To amend the Deepwater Port Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act Amendments of 1983".

AMENDMENT OF LICENSE

SECTION 1. (a) Section 3(4) of the Deepwater Port Act of 1974 is amended to read as follows:

"(4) 'application' means any application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;".

(b) Section 4(b) of the Deepwater Port Act of 1974 is amended to read as follows:

"(b) The Secretary is authorized, upon application and in accordance with the provisions of this Act, to issue a license for the ownership, construction, and operation of a deepwater port.".

(c) Section 4(f) of the Deepwater Port Act of 1974 is amended to read as follows:

"(f) Upon petition of the licensee, a license issued under this Act may be transferred after reasonable public notice and an opportunity to comment, if the Secretary determines that such transfer is not inconsistent with the findings made under subsection (c) of this section at the time the license was issued.".

(d) Section 4 of the Deepwater Port Act of 1974 is amended by redesignating subsections (g) and (h) (and all references thereto) as subsections (h) and (i), respectively, and by inserting after subsection (f) the following new subsection:

"(g) Upon petition of the licensee, a license issued under this Act may be amended after reasonable public notice and an opportunity to comment, if the Secretary determines that the proposed amendment is not inconsistent with the findings made under subsection (c) of this section at the time the license was issued.".

UNIFORM LICENSE CONDITIONS

SEC. 2. Section 4(c) of the Deepwater Port Act of 1974 is amended by adding at the end thereof the following new sentence: "Licenses issued pursuant to this Act shall be uniform insofar as is practicable. If conditions or provisions materially differ between licenses, the holder of any license may apply to the Secretary to amend its license to achieve uniformity, and the Secretary shall grant such amendment unless he finds that the granting of such amendment would be inconsistent with the findings made pursuant to this subsection at the time the license was issued.".

LICENSE TERM

SEC. 3. Section 4(i) of the Deepwater Port Act of 1974 (as redesignated by section 1(d) of this Act) is amended to read as follows:

"(i) Licenses issued under this Act shall remain in effect until revoked by the Secretary pursuant to the provisions of this Act or until surrendered by the licensee.".

REGULATORY REVIEW

SEC. 4. Section 5(a) of the Deepwater Port Act of 1974 is amended by inserting "(1)" after "(a)" and by adding at the end thereof the following new paragraph:

"(2) Upon petition of any licensee, the Secretary shall review any regulation or any provision or condition of any license issued pursuant to this Act to determine if such regu-

lation, provision, or condition is reasonably cost-effective and necessary to meet the objectives of this Act. Unless he determines that such regulation, provision, or condition is reasonably cost-effective and is necessary to meet the objectives of this Act, he shall rescind or revise the regulation, provision, or condition in order to correct these deficiencies. The Secretary shall include a summary of any action taken pursuant to this subsection in the annual report to Congress as required by section 20 of this Act.".

RATES AND DISCRIMINATION

SEC. 5. Section 8 of the Deepwater Port Act of 1974 is amended to read as follows:

"SEC. 8. (a) A licensee under this Act shall operate as a common carrier and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. The level of any rate, fare, or charge set by a licensee of a deepwater port for transportation, storage, and other services may be based on competition, market conditions, and the ability to maintain the economic viability of such port. Any rate, fare, or charge so set shall be deemed just, reasonable, and nondiscriminatory.

"(b) Whenever the Secretary has reason to believe that a licensee is not operating as a common carrier in compliance with subsection (a) of this section, the Secretary may com-

mence a proceeding pursuant to section 554 of title 5, United States Code, and shall order such remedial action, if any, as may be necessary. The Secretary may proceed as provided in section 12 of this Act to suspend or terminate the license of any person determined to be in violation of subsection (a) of this section. The Secretary may also request the Attorney General to take appropriate steps to enforce subsection (a) of this section.".

INSURANCE AND LIABILITY LIMITS

SEC. 6. (a)(1) Section 18(f) of the Deepwater Port Act of 1974 is repealed. All assets of the Deepwater Port Liability Fund, subject to the requirements of paragraph (2) of this subsection, shall be promptly paid to the State deepwater port regulatory agency of the adjacent coastal State which is nearest to the deepwater port and related facilities where such fees were initially collected. Such fees shall be used by such agency in carrying out its deepwater port program.

(2) Within ninety days after the date of enactment of this Act, the Secretary shall determine the total amount of the claims outstanding against the Deepwater Port Liability Fund and shall withhold from the payment in paragraph (1) of this subsection a sufficient reserve to pay these claims. In the event that the total amount of the actual claims paid is less than the amount of the reserve, the difference shall be paid promptly to the responsible State regulatory agency.

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(3) Section 18(h) of the Deepwater Port Act of 1974 is amended by striking out paragraph (3) and by redesignating paragraphs (4) and (5) (and all references thereto) as paragraphs (3) and (4), respectively.

(4) Section 18(c)(3) of the Deepwater Port Act of 1974 is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section" and inserting in lieu thereof "revolving fund established pursuant to section 311(k) of the Federal Water Pollution Control Act".

(5) Section 18(m) of the Deepwater Port Act of 1974 is amended by striking out "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) 'Fund' means the revolving fund established pursuant to section 311(k) of the Federal Water Pollution Control Act.".

(b)(1) The first sentence of section 18(d) of the Deepwater Port Act of 1974 is amended to read as follows: "Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from the discharge of oil from such vessel within any safety zone, except when such vessel is moored at a deepwater port.".

(2) The second sentence of section 18(g) of the Deepwater Port Act of 1974 is amended to read as follows: "In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel, the licensee, or the United States, can show that such damage was caused solely by the negligence of such party.".

(c) Section 311(k)(1) of the Federal Water Pollution Control Act is amended by striking out the period at the end of the first sentence and inserting in lieu thereof the following: "and section 18 of the Deepwater Port Act of 1974.".

JURISDICTION

SEC. 7. Section 19(c) of the Deepwater Port Act of 1974 is amended to read as follows:

"(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize, a deepwater port licensed under this Act unless the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel while located within the safety zone.".

CONFORMING AMENDMENTS

SEC. 8. (a) Sections 3(12) and 4(e)(2) of the Deepwater Port Act of 1974 are amended by striking out ", transferred, or renewed" and inserting in lieu thereof "or transferred".

(b) Section 5(g) of the Deepwater Port Act of 1974 is amended by striking out ", transferred, or renewed".

(c) Section 7(a) of the Deepwater Port Act of 1974 is amended by striking out ", transfer, or renew".

(d) The first sentence of section 7(b)(1) of the Deepwater Port Act of 1974 is amended to read as follows: "Whenever any application for issuance of any license or any petition for the transfer of or amendment to any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application or petition.".

DEEPWATER PORT ACT AMENDMENTS OF 1984

WEDNESDAY, FEBRUARY 22, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2253, Rayburn House Office Building, Hon. Robert A. Roe (chairman of the subcommittee) presiding.

Mr. ROE. This morning the Subcommittee on Water Resources meets to receive testimony on H.R. 2353, the Deepwater Port Act Amendments of 1984.

This bill was referred jointly to our Committee on Public Works and Transportation and the Committee on Merchant Marine and Fisheries. The latter committee has reported the bill with amendments. The Deepwater Port Act of 1974 provides for Federal licensing and regulation of offshore ports designed to receive oil from vessels too large to enter conventional ports.

It authorizes the Secretary of Transportation to license owners and operators and to issue regulations to control the location, construction, and operation of deepwater ports. It also establishes a deepwater port liability fund funded by a 2-cent-a-barrel fee to pay for cleanup costs in the event of oilspills.

H.R. 2353, as reported by the Merchant Marine Committee, makes a number of changes in the basic act. Briefly, it provides an expedited administrative procedure for the amendment, transfer or removal of an outstanding deepwater port license; suspends common carrier rate regulations and tariff filing so long as effective competition exists within a relevant market for the deepwater port; suspends collection of the 2-cent-per-barrel fee as long as there is at least $4 million in the deepwater port liability fund; clarifies certain oilspill liability provisions applicable to a deepwater port, and deletes the provision requiring a bilateral agreement with other countries if ships registered in those countries wish to use the deepwater port and substitute the provision that a foreign vessel using a deepwater port is considered to have consented to the exercise of jurisdiction by the United States over the vessel.

Our first witness today is Mr. Richard F. Walsh, Director of the Office of Economics, Department of Transportation.

But before we call on you, Mr. Walsh, I defer to my distinguished colleague, Mr. Stangeland from Minnesota.

Mr. STANGELAND. Thank you, Mr. Chairman. I have an opening statement, but it pretty much dovetails with what you have just said. And so I would ask that it be made a part of the record.

Mr. ROE. Fine. We will make it a part of the record, without objection. So ordered.

[Mr. Stangeland's statement follows:]

OPENING STATEMENT OF CONGRESSMAN ARLAN STANGELAND

Thank you, Mr. Chairman. Our hearing today provides the opportunity to review the status of the Deepwater Port Act of 1974, the condition of the Louisiana Offshore Oil Port (LOOP), and amendments to the Deepwater Port Act contained in H.R. 2353.

H.R. 2353, which makes several changes in the Deepwater Port Act, was introduced last March and referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation. Merchant Marine and Fisheries reported an amended version of the bill last November.

I am pleased that we are reviewing the 1974 legislation that enabled offshore, deepwater ports to proceed. To date, only the one off the coast of Louisiana has been constructed. Economic conditions and the oil import situation seem to have played a role in limiting the number of these efforts. Certainly conditions have changed in the last 10 years, and a review of the basic legislation and the port are warranted. We also should consider legislative changes, if they are needed, to enable the act to work more effectively to balance the needs of safety, equity, economic vitality, and protection of the environment.

Issues addressed in H.R. 2353 include administrative procedures, regulations, liability, and requirements for deepwater port uses, among others.

Our witnesses today represent the administration and those knowledgeable with the LOOP deepwater port. I look forward to hearing the views and suggestions of all the witnesses.

Mr. ROE. I now call on the sponsor of H.R. 2353, the Honorable John B. Breaux.

Mr. BREAUX. Thank you, Mr. Chairman. I have a prepared statement to offer for the record.

Mr. ROE. Without objection.

[Mr. Breaux's statement follows:]

STATEMENT OF REPRESENTATIVE JOHN BREAUX

Mr. Chairman, thank you and the subcommittee for holding this hearing today on H.R. 2353, proposed amendments to the "Deepwater Port Act of 1974." I join, as the bill's sponsor, with the Louisiana House delegation, which has cosponsored it, in support of the legislation's provisions to amend certain sections of the 1974 act. I urge your prompt and favorable consideration of the bill and hope we can mark up the measure soon.

H.R. 2353 has been amended and reported out by the House Committee on Merchant Marine and Fisheries. The Senate Commerce Committee also has amended and reported out its bill, S. 1546, sponsored by Senators Long and Johnston of Louisiana.

The bill's basic purpose and objective is to modify, or repeal, some sections of the original authorizing statute to permit an offshore deepwater port to operate in a freer, more competitive environment and be more responsive to the marketplace. The proposed changes would make the 1974 act more contemporary by establishing a framework of Government regulation and marketplace competition within which an offshore deepwater port may operate. This will help to provide a workable, effective regime for oversight and operation of offshore deepwater ports. The amendments would also reflect the changes which have occurred in terms of the Nation's energy situation, its import requirements and it sources of supply, since enactment of the original legislation almost 10 years ago.

At that time, Congress had legislated a unique proposition for the United States: Authorization of the licensing, construction, and operation of an offshore deepwater port facility, a commercial enterprise located in waters off the United States' coast. This was landmark legislation. Historically, the first such port has been licensed and constructed. Operationally, it came on line for business in 1981.

The United States' first and only such facility, known as the Louisiana Offshore Oil Port, Inc., or LOOP, is located about 20 miles off Louisiana's coast in approximately 100 feet of water. The facility takes in only crude oil and pumps it to onshore storage sites. From there, the oil is pumped again in crude form to pipelines for distribution in Louisiana, Texas, and the Midwest.

The changes which have occurred in the Nation's energy situation since the bill was enacted have affected the deepwater port's ability to compete and operate successfully for crude oil transportation. Our proposed amendments would allow such a facility to compete and operate more similar to onshore ports and lightering, lightening, and transshipment operations, which are its competitors.

Important to note is key provisions in the act would remain in effect to protect against unfair, discriminatory practices. Authority to suspend or revoke a license continues. Environmental safeguards are retained. Enforcement and oversight by the Secretary of Transportation, the Attorney General, and the Federal Energy Regulatory Commission continues.

At this time, I would like to review with the subcommittee the provisions of H.R. 2353, as amended, adopted, and reported by the House Merchant Marine Committee last year. The four major sections of the bill are as follows:

1. LICENSING

A more simplified procedure is proposed for the transfer, amendment or renewal of an offshore deepwater port's license. The current act's procedure for application for ownership, construction, and operation of such a facility would remain in effect. For the transfer, amendment, or renewal of a license, the licensee would be permitted to petition such, as long as the action is consistent with the findings made at the time of license issuance. Also, licenses issued under the act would remain in effect unless suspended, revoked, or surrendered. Licensees would be permitted to petition for review of license conditions to determine uniformity, insofar as is practicable, with conditions of other licenses issued under the act. Conditions found to be unnecessary nor required any longer by any other Federal department or agency would have to be amended or rescinded.

2. ECONOMIC DEREGULATION

Under this key provision, an offshore deepwater port would be required to operate as a common carrier and to provide non-discriminatory service, but would be permitted to set its rates based on market conditions and competition, as long as there existed effective competition from alternative modes of transportation. Non-compliance with these requirements could lead to FERC proceedings or Attorney General enforcement, at the direction of the Secretary of Transportation. The Secretary would be authorized to suspend or revoke a license for non-compliance with obligations in this section, as is required now by the current law.

3. FEE SUSPENSION AND ABROGATION

Proposed is a temporary suspension of the deepwater port liability fund fee of 2¢ per barrel on each barrel of oil taken in at a deepwater port facility. The fee is suspended pending congressional resolution of legislation, now being considered separately, which would impose a uniform fee collection system for marine transportation of oil, known as superfund legislation. The purpose of the fee and the fund is to provide liability resources for cleanup of oil spills. Due to changes in energy demands, sources of energy imports, and the size of vessels transporting oil, the throughput today at LOOP is less than originally expected 10 years ago. As a result, fee collections have been less than anticipated. Imposition of the fee, however, has helped to render the deepwater port uncompetitive, affecting its economic viability. LOOP has operated at a loss for the years 1982 and 1983 totaling some $60.0 million.

With regard to liability, it is important to note that the 1974 act requires statutory liability of $50.0 million for a deepwater port. LOOP, as a condition of its license, has been required to carry, and it does so, a $150 million insurance policy as proof of financial responsibility. The policy provides for $225 million aggregate annual protection and may be renewed should the maximum amount be used in less than a year's time. This insurance coverage would be used before Federal funds are involved. Other liability required by the act and retained by the bill is the $20.0 million in statutory liability for vessel owners or operators. Joint and several liability is required, also, of vessel owners and operators. Every effort is made to ensure strong

and adequate liability provisions are contained in the proposed bill and retained in the original act.

With reference to the liability fund, once the fee would be suspended temporarily, the fund would be maintained at a level of $4.0 million. It should be noted that no claims have been paid to date from the deepwater port liability fund, nor have there been any major oil spill at the offshore LOOP facility.

4. RELATIONSHIP TO OTHER LAWS

Repeal of the required bilateral agreement for use of an offshore deepwater port by a foreign flag ship is proposed in the bill. The act, by requiring bilateral agreements between the United States and a foreign nation for jurisdiction over vessels, and their personnel, bearing that state's flag, limits a deepwater port's throughput, again rendering it uncompetitive. An offshore deepwater port is limited to business only from those vessels whose flag state has entered into a bilateral agreement with the United States. Restricted is the opportunity to compete. Affected is the port's economic viability.

Replacing the current requirement would be a consent regime policy. This would subject a foreign flag vessel, calling at or using such an offshore facility, to the exercise of jurisdiction by the United States. This is the same jurisdiction to which vessels consent when calling at United States coastal ports. It is consistent with customary international law, as codified in the recently-concluded United Nations Convention on Law of the Sea and the unilateral declaration by the President, on March 10, 1983, of an Exclusive Economic Zone. This proposed change would permit a more competitive opportunity for offshore deepwater ports.

Mr. Chairman and members of the subcommittee, the proposed amendments to the 1974 act would affect only some of its provisions. The bill seeks a reasonable goal, to permit an offshore deepwater port to survive economically because there exists a more competitive environment in which to operate.

Thank you, again, Mr. Chairman and members of the subcommittee for holding these hearings on H.R. 2353 and this opportunity to express my support for the legislation.

Mr. ROE. The gentleman from Louisiana may proceed.

Mr. BREAUX. Thank you, Mr. Chairman, first of all, for having the hearings today. I think that it certainly shows your interest in this matter, although it seems like it is only a Louisiana problem and a Louisiana concern. It is really a national concern and we appreciate your attention to the problem.

I remember quite well almost 10 years ago when we started working on this legislation, I was one of the chief sponsors along with some other members on this Public Works Committee. It does not seem like it was 10 years ago, but it was.

At that time I think the legislation that we crafted was legislation that we felt was going to be applicable to not only the State of Louisiana because of the offshore deepwater port we have there, but we are talking about deepwater ports off of California and deepwater ports in Lake Michigan and the Great Lakes; perhaps, some deepwater ports certainly on the eastern seaboard off of the gentleman from New Jersey's district and perhaps others up in that area and perhaps off of Florida.

So what we crafted was at that time an extremely complicated and sophisticated piece of legislation. We were trying to look for all possible problems that might occur and to adopt a scenario legislatively that would take care of all foreseeable problems.

I think we probably went a little bit too far. I think today's situation indicates that we only have one deepwater port in existence in any part of the United States and in 1982 it lost $40 million. So there is not a real rush out there to construct additional deepwater ports. Basically it is losing money not because it is being mismanaged. It is being managed very well, considering the problems. The

problems occur because we are not importing as much oil. The problems occur because there are alternate means of transferring the oil to U.S. ports. And partly it is losing money because of the complicated scenario that we have outlined in the legislation as to how they can operate.

And the legislation we have before us that has already been reported by the Merchant Marine and Fisheries Committee will take care of that problem, I think, and do so in a manner which preserves the integrity of the legislation that we originally introduced and have acted upon.

So, I think it is a good piece of legislation and certainly commend it to the members.

Mr. ROE. I thank the gentleman from Louisiana for his statement.

We now will call on Director Walsh.

Mr. Walsh, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

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TESTIMONY OF RICHARD F. WALSH, DIRECTOR, OFFICE OF ECONOMICS,
DEPARTMENT OF TRANSPORTATION, BEFORE THE HOUSE OF REPRESENTATIVES,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
SUBCOMMITTEE ON WATER RESOURCES CONCERNING H.R. 2353,
THE DEEPWATER PORT ACT AMENDMENTS
FEBRUARY 22, 1984

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss H.R. 2353 as reported, a bill to amend the Deepwater Port Act of 1974. I am accompanied by Warren L. Dean from the Office of the General Counsel, and Stephen D. Jackson and Frank A. Martin, Jr. from the Coast Guard. The Office of the Secretary of Transportation and the Coast Guard share responsibility for administration of the Deepwater Port Act.

Our detailed views on the proposed legislation were conveyed to the Committee in our letter of January 12, 1984. While we generally support the proposed changes to the Deepwater Port Act, certain areas still concern us. In my statement I will touch on the historical background of the Deepwater Port Act, and summarize the areas of our concern.

Historical Backgound

Over the decade of the 1960's the United States steadily increased its imports of foreign crude petroleum. By the end of that decade very large tank ships--providing economies of scale on long trips--were becoming commonplace in the world's oil trade. The U.S., however, was unable to avail itself of these economies in its own trade--involving savings of up to half of the ocean transportation cost--because our East and Gulf Coast ports are too shallow to accommodate these large tankers.

Predicted increases in U.S. oil consumption and the lack of deepdraft ports to accommodate large tank ships gave rise to concern about the potential for adverse effects on our Nation's economy, security and standard of living, and about possible environmental damage to our coasts resulting from greatly increased tanker traffic.

Responding to this concern, during the 92d and 93d Congresses, a number of bills pertaining to deepwater ports and other types of offshore development were introduced. By 1974, our crude oil imports reached 3.5 million barrels per day, or about three times the amount in 1960, with no sign that oil consumption levels would stabilize in the foreseeable future. Congress passed the Deepwater Port Act of 1974 and the President signed it into law on January 3, 1975.

Since 1975 the Department of Transportation has offered four deepwater port licenses of which only one was accepted. That license was granted in 1976 to Louisiana Offshore Oil Port (LOOP) Inc., the owner and operator of the only deepwater port in the United States. The most recent license offer was to Texas Offshore Port (TOP) Inc., in 1981. TOP was unable to accept the license at that time and the offer has been extended to June 1984.

LOOP began operations in May 1981. However, while its potential throughput capacity is 1.4 million barrels a day, I understand that the current throughput has fallen below what LOOP considers the economic break-even point because of the weak demand for foreign crude. Currently, crude oil imports are estimated at a little over 3 million barrels per day for the United States, about the same level as in 1974. LOOP has had to make strenuous efforts to remain competitive during this period of weaker than expected demand for foreign crude and depressed tanker rates, which offer

shippers a cheap alternative to the large tankship/deepwater port strategy for importing oil. LOOP has lowered its tariff twice in the past to be economically competitive. We understand that while throughput at LOOP has increased, it is still below the break-even point.

H.R. 2353

I will now summarize the Department of Transportation views on H.R. 2353, the proposed legislation to amend the Deepwater Port Act. In general, we support the intent of the proposed amendment. We believe that some adjustments to the Act are appropriate to reflect nearly eight years of operating experience. However, we believe that some of the provisions of H.R. 2353 are not necessary or in the public interest.

Section 2(c) of H.R. 2353 would simplify the procedure for transferring or amending an existing license, and provide for basing the Secretary's decision on amending, transferring or renewing a license on the findings made during the processing of the original application.

We do not object to the intent of this proposal, particularly since certain findings made during the processing of the original application would still be valid. In the case of license transfer, we would, however, wish to require evidence that the new applicant is financially responsible and willing to comply with all relevant laws and license conditions. In addition, we consider the existing antitrust review provisions of the Act, including discovery, to be essential to the Secretary's decision. Finally, we would wish to require that a petition for license transfer be based on current relevant information and that review of the petition include consideration of any possible need to adjust the license.

Section 2(e) would expand the provisions of Section 4(e)(1) of the Act to allow a licensee to seek amendment of its license to achieve parity with any other deepwater port licensee, and to require the Secretary to review and amend or rescind a license condition that the Secretary determines to be no longer necessary or otherwise required by any interested Federal department or agency.

While the first part of this proposal appears to be reasonable in concept, certain factors--such as the owners' economic position and the characteristics, location and operation of the facilities--may require that conditions and provisions differ from license to license. Therefore, we oppose this part of Section 2(e).

We support, however, the second part of this proposal concerning the amendment or rescission of unnecessary license conditions.

Section 3 would amend section 8 of the Act to conditionally free the licensee from Federal Energy Regulatory commission (FERC) regulation of its tariff and increase the regulatory powers of the Secretary of Transportation to ensure that a deepwater port provides nondiscriminatory service under its common carrier obligation.

While we are in general agreement with the deregulatory intent of this section in light of present market conditions, we believe it is appropriate to retain some regulatory authority, in the event current conditions change. Since the Department of Transportation does not have the expertise or the resources necessary to assume tariff regulation responsibilities, we recommend that the FERC make the determination to suspend tariff regulation for as long as effective competition from alternative transportation systems exists.

Section 4(a)(1) apparently is intended to limit oil spill liability of a vessel engaged in deepwater port activities to discharges within the port safety zone only.

We do not object to this amendment if our interpretation is correct; otherwise, we would be pleased to work with the Committee on alternative language.

Section 4(a)(2) would amend Section 18(f)(3) of the Act to suspend the two-cents-per-barrel fee on oil when the Deepwater Port Liability Fund (Fund) has a balance equal to the amount it has at the time of enactment. If this bill were to be enacted early in 1984, the Fund balance would be approximately $4.5 million. This section provides that the fee collection will be resumed when the Fund balance is less than $4 million.

Although we would prefer a larger balance in the Fund, we have no objection to this provision, subject to the incorporation of a technical amendment to broaden the Fund administrator's borrowing authority. The most important function of the Fund is its availability to the Secretary under Section 18(c)(3) of the Act for an immediate draw to pay promptly for Government oil spill cleanup costs. This authority is necessary since the deepwater port licensee or its insurance company would probably wait until all claims for damage and spill removal costs (including the Government's costs) are presented before paying them. With a small amount in the Fund, the Fund would have to rely on its borrowing authority under Section 18(f)(3) of the Act to meet the Secretary's need to draw upon the Fund for

Government cleanup costs in the event of a major spill requiring Government action. The Fund's current authority to borrow money to pay for direct draws on the Fund for Government cleanup costs is uncertain. Section 18(f)(3) apparently only permits the Fund to borrow to pay claims, and not to cover the Secretary's draw.

Section 5 would amend Section 19(c) of the Act by deleting the provision that limits access to deepwater ports to vessels of those countries which have, in bilateral agreements, consented to the exercise of jurisdiction by the United States. It would substitute instead a statement that a foreign vessel which called at or otherwise used a deepwater port would be deemed to have consented to the exercise of jurisdiction by the United States.

We would prefer that the requirement for bilateral agreements be retained. We have grave concerns about the regime which this section of the bill would substitute, under which the vessel operator would be deemed to have consented to jurisdiction on behalf of the flag state. Traditionally, the United States has opposed the exercise of foreign jurisdiction over U.S. flag vessels by this means.

During the pendancy of this legislation, the situation with respect to bilateral agreements, and the numbers of vessels eligible to call at LOOP, has dramatically improved. The Department, in cooperation with the Department of State, has continued to make contact with foreign governments to propose agreements that would make their fleets eligible, and those contacts have borne fruit.

In recent months we have successfully concluded agreements with Belgium, Spain, Cyprus, and, despite predictions to the contrary, Singapore. We are advised that the government of Turkey has authorized an agreement as well. We have approached the Japanese on the possibility of reaching a similar agreement, and expect to discuss this with them further in bilateral maritime talks to be held this spring. We consider an agreement with Brazil highly likely. Having recently been advised by LOOP officials of the desirability of an agreement with Mexico, we are undertaking steps to accomplish that end. As a result of these successful and ongoing efforts, the number of vessels eligible to call at LOOP has been increased; 81 percent of the foreign tanker tonnage is now covered by agreement. We expect that trend to continue.

The Committee may want to consider whether there remains a real need for changing this particular aspect of the law. It appears that the proposed change is intended to remedy a problem that has now largely been solved. If the Committee remains convinced that there is a need for change in this area, however, the proposed language included in our letter of January 12, 1984 to the Committee remains acceptable.

Suggested changes to the proposed legislation which reflect and incorporate the views I have presented are contained in the attached Appendix A.

In conclusion, let me summarize our position on the proposed legislation.

- We do not object to streamlining the process for the transfer or amendment of an existing license. However, we want to retain authority for the Secretary of Transportation to take account of relevant factors which may have a bearing on the decision.
- We endorse repeal of license term limitations.
- We believe that uniformity in license conditions may not always be possible or desirable because of differences in conditions affecting each license. We support, however,the amendment or rescission of unnecessary license conditions.
- We endorse the proposal to curtail tariff regulations at this time. However, we believe that some standby economic regulatory authority by FERC should be retained. The Department of Transportation does not have the expertise or resources necessary to assume tariff regulation responsibilities.
- We do not object to clarification of the oil spill liability of vessels which use a deepwater port.
- We endorse the temporary suspension of the two-cent-per-barrel fee as long as the unobligated balance in the Deepwater Port Liability Fund does not drop below $4 million, subject to provision of broadened borrowing authority.
- We prefer that the present bilateral agreement requirement be retained, especially in view of the recent progress in obtaining those agreements.
- If the Committee nevertheless finds that change is necessary, the compromise discussed in our letter of January 12, 1984 remains acceptable.

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We believe that we have been successful in administering the Deepwater Port Act because of the foresightedness of its drafters and the cooperation of the applicants and licensees. However, time and experience have shown that the Act contains some requirements which are unnecessary or unnecessarily burdensome, or both. Moreover, continued enforcement of these requirements could well prove inimical to the viability of our only deepwater port which is currently operating in a world oil market and a domestic oil economy far different from that envisioned when the Act was drafted.

Although the Department of Transportation supports changes in the Deepwater Port Act to simplify administrative requirements and to improve review procedures, we oppose H.R. 2353 unless changes are made to sections 2(c), 3, 4(a)(2) and 5 as set forth in the attached Appendix A..

Mr. Chairman, that concludes my prepared statement. My colleagues and I would be happy to answer any questions you might have.

APPENDIX A

Proposed Amendments to H.R. 2353

Section 2(c) of H.R. 2353 is amended by striking the period and inserting:

", as modified by subsequent events, and in the event of a transfer, the transferee meets the requirements of this Act, including the provisions of subsections (c)(1), (c)(2), and (c)(7) of this section."

Section 3 of H.R. 2353 is deleted in its entirety, and the following is substituted therefore:

"Sec. 3. Section 3(a) of the Deepwater Port Act of 1974 (33 U.S.C. 1507) is amended by striking the period and inserting:

", unless the Federal Energy Regulatory Commission determines, upon application by the licensee of such deepwater port, that it is subject to effective competition from alternative oil transportation systems."

After Section 4(a)(2) of H.R. 2353 add the following:

(3) Amend the fifth sentence of section (f)(3) as follows: After the word "than" insert "the amount the Secretary needs to draw upon under subsection (c)(3) of this section or".

(4) Amend the seventh sentence of Section (f)(3) as follows: After the word "needed" insert "to draw upon under subsection (c)(3) of this secton or".

Renumber Sections 4(a)(3) and 4(a)(4) of H.R. 2353 to 4(a)(5) and 4(a)(6), respectively.

Section 5 of H.R. 2353 is deleted in its entirety, and the following is substituted therefor:

Section 5:

(a) Subsection (a) of section 19 of the Deepwater Port Act of 1974 is amended by adding a new paragraph (3) to read:

"(3) The Secretary of State shall notify the government of each foreign state having vessels registered in or flying its flag, which may call at or otherwise utilize a deepwater port but which does not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section, that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such foreign state that, absent its objection, its vessels will be subject to the jurisdiction of the U.S. whenever they:

(A) are calling at or otherwise utilizing a deepwater port, and

(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notifications made under this paragraph."

(b) Subsection (c) of section 19 of the Deepwater Port Act of 1974 is amended to read:

"(c)(1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and persons on board them, registered in or flying the flags of foreign states, when such vessels are:

(A) calling at or otherwise utilizing a deepwater port, and

(B) are within the safety zone of such a deepwater port, and engaged in activities connected, associated or potentially interfering with the use and operation of the deepwater port.

The jurisdiction of the United States under this subparagraph shall not, however, apply to vessels registered in or flying the flag of any foreign state that has objected to the application of such jurisdiction.

(c)(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this Act unless -

(A)(i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the flag of that state and persons on board such vessels in

accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safety zone, or

(A)(ii) the foreign state has not objected to the application of the jurisdiction of the United States to any vessel, or the persons on board it, in accordance with paragraph (1) of this subsection, while the vessel is located within the safety zone, and

(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone."

"(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obligated to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section."

(c) Subsection (b) of this section shall be effective on the ninetieth day following the date of enactment of the Deepwater Port Act Amendments of 1984. The Secretary of State shall make the first series of notifications, referred to in the new paragraph (3) of section 19 (a) of the Deepwater Port Act of 1974, prior to the thirtieth day following the date of enactment of the Deepwater Port Act Amendments of 1984.

Mr. ROE. Please proceed.

TESTIMONY OF RICHARD F. WALSH, DIRECTOR, OFFICE OF ECONOMICS, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY WARREN L. DEAN, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL LAW; FRANK A. MARTIN, CHIEF, FUNDS MANAGEMENT BRANCH, OFFICE OF MARINE ENVIRONMENT AND SYSTEMS, U.S. COAST GUARD; AND STEVEN D. JACKSON, STAFF ATTORNEY, OFFICE OF THE CHIEF COUNSEL, U.S. COAST GUARD

Mr. WALSH. Thank you, Mr. Chairman. I am pleased to appear before you today to discuss H.R. 2353.

Mr. ROE. Will you identify for the record your associates.

Mr. WALSH. I will do that, Mr. Chairman, as we go through.

Mr. ROE. Very fine.

Mr. WALSH. I am pleased to appear before you today to discuss H.R. 2353, a bill to amend the Deepwater Port Act of 1974. I am accompanied by Warren L. Dean from the Office of General Counsel; and Steven D. Jackson and Frank A. Martin, Jr., from the Coast Guard.

The Office of the Secretary of Transportation and the Coast Guard share responsibility for the administration of the Deepwater Port Act. Our detailed views on the proposed legislation were conveyed to the committee in our letter of January 12, 1984.

While we generally support the proposed changes to the Deepwater Port Act, certain areas still concern us. In my statement I will touch on the historical background of the Deepwater Port Act and summarize our areas of concern.

Over the decade of the 1960's the United States steadily increased its imports of foreign crude petroleum. By the end of that decade, very large tank ships—providing significant economies of scale on long trips—were becoming commonplace in the world's oil trade.

The United States in its own trade, however, was unable to realize these economies involving savings of up to half the ocean transportation costs because our east and gulf coast ports are too shallow to accommodate these large tankers.

Predicted increases in U.S. oil consumption, and lack of deep draft ports to accommodate large tank ships, gave rise to concern about the potential for adverse effects on our Nation's economy, security, and standard of living, and about possible environmental damage to our coasts resulting from greatly increased tanker traffic.

Responding to this concern, during the 92d and 93d Congresses, a number of bills pertaining to deepwater ports and other types of offshore development were introduced. By 1974 our crude oil imports reached 3.5 million barrels per day or about three times the 1960 volumes with no sign that oil consumption levels would stabilize in the foreseeable future. Congress passed the Deepwater Port Act of 1974 and the President signed it into law on January 3, 1975.

Since 1975 the Department of Transportation has offered four deepwater port licenses of which only one was accepted. That li-

cense was granted in 1976 to Louisiana Offshore Oil Port, Inc. (LOOP), the owner and operator of the only deepwater port in the United States. The most recent license offer was to Texas Offshore Port, Inc. (TOP) in 1981. TOP was unable to accept the license at that time and the offer has been extended to June 1984.

LOOP began operations in May 1981. However, while its potential throughput capacity is 1.4 million barrels a day, I understand that current throughput has fallen below what LOOP considers the economic break-even point because of the weak demand for foreign crude. Currently U.S. crude oil imports are estimated at a little over 3 million barrels per day, about the same level as 1974. LOOP has had to make strenuous efforts to remain competitive during this period of weaker than expected demand for foreign crude and depressed tanker rates, which offer shippers a cheaper alternative to the large tankship deepwater port strategy for importing oil. LOOP has lowered its tariff twice in the past to stay economically competitive. We understand that while throughput at LOOP has recently increased, it is still below the break-even point. I will now summarize the Department of Transporation's views on H.R. 2353, the proposed legislation to amend the Deepwater Port Act. In general, we support the intended proposed amendment. We believe that some adjustments to the act are appropriate to reflect nearly 8 years of operating experience. However, we believe that some of the provisions of H.R. 2353 are not necessary or in the public interest.

Section 2(c) of the bill would simplify the procedure for transferring or amending an existing license and provide for basing the Secretary's decision on amending, transferring, or renewing the license on the findings made during the processing of the original application.

We do not object to the intent of this proposal, particularly since certain findings made during the processing of the original application would still be valid. In the case of license transfer, we would, however, wish to require evidence that the new applicant is financially responsible and willing to comply with all relevant laws and license conditions. In addition, we consider the existing antitrust review provisions of the act, including discovery, to be essential to the Secretary's decision. Finally, we would wish to require that a petition for license transfer be based on current relevant information and that review of the petition include consideration of any possible need to adjust the license.

Section 2(e) would expand the provisions of section 4(e)(1) of the act to allow a licensee to seek amendment of its license to achieve parity with any other deepwater port licensee, and to require the Secretary to review or amend or rescind a license condition that the Secretary determines to be no longer necessary or otherwise required by any interested Federal department or agency.

While the first part of this proposal appears to be reasonable in concept, certain factors—such as the owner's economic position and the characteristics, location, and operation of a facility—may require conditions and provisions that differ from license to license. Therefore, we oppose this part of section 2(e).

We support, however, the second part of this proposal concerning the amendment or rescission of unnecessary license conditions.

Section 3 would amend section 8 of the act to conditionally free the licensee from the Federal Energy Regulatory Commission regulation of its tariff and to increase the regulatory powers of the Secretary of Transportation to ensure that a deepwater port provides nondiscriminatory service under its common carrier obligation.

While we are in general agreement with the deregulatory intent of this section in light of present market conditions, we believe it is appropriate to retain some regulatory authority against the contingency that circumstances change in the future. Since the Department of Transporation does not have the expertise or the resources necessary to assume tariff regulation responsibilities, we recommend that the Federal Energy Regulatory Commission make the determination to suspend tariff regulations for as long as effective competition from alternative transportation systems exists.

Section 4(a)(1) apparently is intended to limit the oilspill liability of a vessel engaged in deepwater port activities to discharges within the port safety zone only.

We do not object to this amendment, if our interpretation is correct; otherwise, we would be pleased to work with the committee on alternative language.

Section 4(a)(2) would amend section 18(f)(3) of the act to suspend the 2-cent-per-barrel fee on oil when the deepwater port liability fund has a balance equal to the amount it had at the time of enactment. If this bill were to be enacted early this year, the fund balance would be approximately $5.3 million. This section provides that the fee collection would be resumed when the fund balance fell below $4 million.

Although we would prefer a larger balance in the fund, we have no objection to this provision, subject to the incorporation of a technical amendment to broaden the fund administrator's borrowing authority. The most important function of the fund is its availability to the Secretary under section 18(c)(3) of the act for an immediate draw to pay promptly the Government oilspill cleanup costs. This authority is necessary since the deepwater port licensee or its insurance company would probably wait until all claims for damage and spill removal costs, including the Government's costs, are presented before paying them. With a small amount in the fund, the fund would have to rely upon the borrowing authority under section 18(f)(3) of the act to meet the Secretary's need to draw upon the fund for Government cleanup costs in the event of a major oilspill requiring Government action. The fund's current authority to borrow money to pay for the direct draws on the fund for Government cleanup costs is uncertain. section 18(f)(3) apparently only permits the fund to borrow to pay claims and not to cover the Secretary's draw.

Section 5 would amend section 19(c) of the act by deleting the provision that limits access to deepwater ports to vessels of those countries which have, in bilateral agreements, consented to the exercise of jurisdiction by the United States. It would substitute instead a statement that a foreign vessel which called at or otherwise used a deepwater port would be deemed to have consented to the exercise of jurisdiction by the United States.

We would prefer that the requirement for bilateral agreements be retained. We have grave concerns about the regime which this

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section of the bill would substitute, under which the vessel operator would be deemed to have consented to jurisdiction on behalf of the flag state. Traditionally, the United States has opposed the exercise of foreign jurisdiction over U.S.-flag vessels by this means.

During the pendancy of this legislation, the situation with respect to bilateral agreements, and the numbers of vessels eligible to call at LOOP has dramatically improved. The Department, in cooperation with the Department of State, has continued to make contact with foreign governments to propose agreements that would make their fleets eligible, and those contacts have borne fruit.

In recent months we have successfully concluded agreements with Belgium, Spain, Cyprus, and despite predictions to the contrary, Singapore. We are advised that the Government of Turkey has authorized an agreement as well. We have approached the Japanese on the possibility of reaching a similar agreement, and expect to discuss this with them further in bilateral maritime talks to be held this spring. We consider an agreement with Brazil highly likely. Having recently been advised by LOOP officials of the desirability of an agreement with Mexico, we are undertaking steps to accomplish that end. As a result of these successful and ongoing efforts, the number of vessels eligible to call at LOOP has increased; 81 percent of the foreign tanker tonnage is now covered by agreement. We expect that trend to continue.

The committee may want to consider whether there remains a real need for changing this particular aspect of the law. It appears that the proposed change is intended to remedy a problem that has now largely been solved. If the committee remains convinced that there is a need for change in this area, the proposed language included in our letter of January 12, 1984, remains acceptable.

We believe that we have been successful in administering the Deepwater Port Act because of the foresightedness of its drafters and the cooperation of the applicants and licensees. However, time and experience have shown that the act contains some requirements which are unnecessary or unnecessarily burdensome, or both. Moreover, continued enforcement of these requirements could well prove inimicable to the viability of our only deepwater port which is currently operating in a world oil market and a domestic oil economy far different from that envisioned when the act was drafted. Although the Department of Transportation supports changes in the Deepwater Port Act, to simplify administrative requirements and to improve review procedures, we would oppose H.R. 2353 unless changes are made to sections 2(c), 3, 4(a)(2), and 5 as set forth in the attached appendix A.

Mr. Chairman, that concludes my prepared statement. My colleagues and I would be happy to answer any questions you might have.

Mr. ROE. Well, thank you very much for your statement. I do not have any initial questions.

Mr. STANGELAND. Well, I have a couple of questions, Mr. Chairman. On page 6 of your formal statement, you indicate:

> We have grave concerns about the regime which this section of the bill would substitute, under which the vessel operator would be deemed to have consented to jurisdiction on behalf of the flag state. Traditionally, the United States has opposed the exercise of foreign jurisdiction over U.S.-flag vessels by this means.

Would you please expand on that statement a little more for the committee. Are there any other instances in Federal law of which you are aware that involve consent to U.S. jurisdiction by foreign agents?

Mr. WALSH. Mr. Chairman, I would like to turn that question over to my maritime legal expert here, Mr. Dean.

Mr. DEAN. Congressman Stangeland, we are not aware of any similar situation where the United States exercises a regime whereby the master or captain of a foreign vessel is deemed to have consented to our jurisdiction. The subject of jurisdiction of the vessels of one state by another state is a matter to be determined between governments. Does that answer your question?

Mr. STANGELAND. Let me see. Are there any other instances in Federal law that you are aware of involving consent to U.S. jurisdiction by another nation?

Mr. DEAN. No, sir, there are not.

Mr. STANGELAND. Well, regarding the bilateral agreements on page 7 you state that any problem has now largely been solved. Could you indicate to the committee which user or expected users of LOOP do not currently have bilaterals with the United States, and, for those that do not have bilaterals, by what date do you expect such agreements to be completed.

Mr. DEAN. The two principal, potential users of the LOOP that we do not currently have bilaterals with are Mexico and Japan. We are working toward bilaterals with both of those countries. It is very difficult to give precise dates as to when we may reach agreement with Mexico and Japan.

We will be traveling to Tokyo this spring and we will be discussing this item with the Government of Japan, among others, in the maritime context.

Mr. ROE. Will the gentleman yield? What is the timeframe involved. In other words, suppose, for example, that LOOP is losing about $40 million a year. I am sure they will speak to that issue. The question is, How long does it take from the initiation of the potential application of these countries to LOOP? How long does it take to be able to approve?

In other words, let us assume you are negotiating with Japan now. How long will it take to conclude? What is the average, a month, 6 months, a year?

Mr. DEAN. Well, firstly——

Mr. ROE. I know it all depends. But what is the average?

Mr. WALSH. Mr. Chairman, I think I can speak to that. This kind of agreement is usually consummated by a simple exchange of letters and it could probably be accomplished certainly within 30 days were the countries disposed to do it in that fashion.

Frequently, however, it requires consultations among a number of ministries in a foreign country and the same here. So it can stretch out for many months, even when both countries are ultimately favorably disposed to consummating such an agreement.

Mr. ROE. So it is an unknown at the moment.

Mr. BREAUX. Will the chairman yield?

Mr. ROE. Yes, of course.

Mr. BREAUX. We have had LOOP since 1974 and we still do not have a bilateral agreement with Japan for these 10 years.

Mr. ROE. Well, I think if the gentleman will yield, because what I am trying to get at is what the magic of this is. In other words, there is enough bureaucracy and letter writing now. I cannot read all my mail. So the question is, Why are we negotiating? Why should we be delayed?

Mr. DEAN. The delay is not on our part, Mr. Chairman. Some countries have concern over the assent to this jurisdiction over their vessels for the purposes of serving LOOP and/or any offshore port. And we stand prepared to resolve those concerns and reach agreement just as soon as we can.

I remember several years ago we sent out letters to affected posts, representatives of foreign governments and advised them of our willingness to enter into negotiations to reach an agreement so their vessels could call at LOOP and it just takes two to reach these agreements.

What you are asking about is matters that are in the discretion of foreign governments and we cannot always give you an answer as to why they want to take time to study the matter or they have some concerns.

Mr. ROE. What I am trying to get at is what is the magic in the whole thing? I am from Japan. I have a ship and I want to dock it and I want to sell it or dispose of it or whatever at LOOP. Now, why should I have a problem with my government on that?

Mr. DEAN. I think the government's concern is making sure that the jurisdictional scheme is consistent with their understanding and their policies with regard to international law of the sea and the positions that they have maintained. And they want—Japan particularly and other countries will want—an agreement with the United States that is consistent with their policies, and they will be careful to assure that.

Mr. ROE. The gentleman from Minnesota.

Mr. STANGELAND. You seem to believe that current and projected bilateral access agreements will be successful. What need, if any, do you see for changing current access requirements to the LOOP facility?

Mr. DEAN. Well, we are pretty much convinced that we will be able to conclude bilaterals within the near future with all countries whose vessels have an interest in serving LOOP.

We understand, however, that LOOP has been concerned that it has lost some business by reason of the lack of bilaterals with some countries, and we are perfectly willing to have an alternative procedure whereby the vessels of those countries can obtain access to LOOP based upon notification to the foreign government and their failure to object to our assertion of that jurisdiction.

At the same time it is very important for us to maintain the bilateral requirement for those countries with whom we do have bilaterals. We feel that the problem is solving itself. We feel that it will continue to solve itself within a short timeframe, but we are perfectly prepared to put in a separate regime the one that was transmitted to you in our letter of January 12—to tide us over the period before we have bilaterals in place with all countries interested in serving LOOP.

Mr. STANGELAND. Is it your contention at all that lacking a bilateral agreement, and even if we were to accept the bill's approach of

deemed consent to U.S. jurisdiction, Japan would not use LOOP then?

Mr. DEAN. I think that is a very real possibility. I think the bilateral agreements give us the opportunity to resolve differences between governments—and to preserve positions in law of the sea matters, for example, that we would not have in the absence of the bilateral agreements.

So, I would suggest: yes, frankly, we have such a provision in the bilateral that we have now with the Government of France. They have in effect put a reservation into their agreement that states effectively that nothing in the agreement will be considered to prejudice their position on the Law of the Sea Convention and we think that is very valuable flexibility.

Mr. STANGELAND. Thank you.

Mr. ROE. The gentleman from Louisiana.

Mr. BREAUX. With regard to the consent regime, do we not assert jurisdiction over foreign nations that we do not have bilateral agreements when they call upon a conventional U.S. port, Mr. Walsh?

Mr. WALSH. Again, I will turn this over to Mr. Dean.

Mr. BREAUX. Mr. Dean.

Mr. DEAN. Yes, sir, that is within our territory; we have jurisdiction over it.

Mr. BREAUX. What kind of jurisdiction do we assert over those vessels that call at a U.S. conventional port? Let us take a Japanese ship that you do not have a bilateral agreement with. It is calling on the Port of New Orleans. What kind of jurisdiction do we assert over that type of situation?

Mr. DEAN. Territorial jurisdiction.

Mr. BREAUX. That includes jurisdiction over what? What laws apply to that Japanese ship?

Mr. DEAN. Well, the Japanese ship, like any other Japanese national, is in the territory of the United States. We have territorial, plenary jurisdiction over their conduct.

Mr. BREAUX. The customs laws?

Mr. DEAN. Yes.

Mr. BREAUX. Safety laws?

Mr. DEAN. Absolutely.

Mr. BREAUX. Health laws?

Mr. DEAN. Yes.

Mr. BREAUX. Immigration laws?

Mr. DEAN. Sure. Of course.

Mr. BREAUX. Are you familiar with article 56 and article 60 on the Law of the Sea Treaty?

Mr. DEAN. Generally.

Mr. BREAUX. Does not the Law of the Sea Treaty, which we are not a signatory to, but which goes into effect when 100 nations approve it, does that not say that coastal States have certain rights within their Exclusive Economic Zone and those rights include a coastal State shall have exclusive rights as jurisdiction, as provided in the relevant provisions of the convention with respect to the establishment and use of artificial islands, installations, and structures located within the Exclusive Economic Zone.

Further, article 60 thoroughly elaborates on what that jurisdiction is. It says that within this zone, within 200 miles, that the coastal State has exclusive jurisdiction over such artificial islands, installations, and structures, including jurisdictions with regard to customs, physical, health, safety, and immigration regulations.

And then article 60 further says a coastal State may, when necessary, establish reasonable safety zones around islands, installations, and structures and may take appropriate measures to ensure the safety of navigation around artificial islands, installations, and structures. Are you familiar with that?

Mr. DEAN. Generally, yes.

Mr. BREAUX. Are you familiar with the President's declaration of an Exclusive Economic Zone for the United States? Why, can you tell me, that that declaration by the President of the United States, coupled with the Law of the Sea Treaty, does not give the United States the authority to exercise that type of jurisdiction over an artificial island within the Exclusive Economic Zone of the United States, which is what this is?

Why does that not give us that, in your opinion?

Mr. DEAN. Well, first, it does not give us criminal jurisdiction, Mr. Congressman.

Mr. BREAUX. I did not mention that, did I? I said safety, immigration, health, navigation, all the ones that I mentioned.

Mr. DEAN. Well, criminal jurisdiction is an important part of all that.

Mr. BREAUX. I am not talking about criminal jurisdiction. I am talking about the things I said: customs, physical health and safety and immigration regulations, the ones that I am talking about.

Why does the Law of the Sea Treaty coupled with the President's declaration in March of an Exclusive Economic Zone around the United States in which we exercise sovereign rights within that Zone—that that Presidential declaration, together with the Law of the Sea Treaty, does not give us the authority to exercise that type of jurisdiction over a deepwater port, which is in effect an artificial island located within our Zone. What is the difference?

Mr. DEAN. The territorial jurisdiction—jurisdiction over vessels that are clearly within our territorial sea, or at a territorial port of the United States—and the jurisdiction contemplated by the Law of the Sea Convention for structures established in our Exclusive Economic Zone are intended to be fundamentally different jurisdictional schemes.

Mr. BREAUX. OK. Are you telling me that the President's declaration—this is an important question—that the President's declaration on the EEZ in March does not give the United States the authority to exercise jurisdiction with regard to customs, physical health, safety, and immigration regulations? And if so, why do you think it does not?

Mr. DEAN. For the purpose of exploiting the natural resources of our Exclusive Economic Zone, the President's declaration gives us the authority we need to protect our interests in that area. LOOP does not involve the exploitation of the natural resources of our Exclusive Economic Zone.

Mr. BREAUX. Does it not concern the management of our economic resources? The port is not a nonliving resource of the United States?

Mr. DEAN. A port is not a nonliving—I do not think that LOOP is a resource of our Exclusive Economic Zone, no, sir.

Mr. BREAUX. It is located in the economic Zone.

Mr. DEAN. Absolutely.

Mr. BREAUX. And it is not a resource? It is not of value to the United States?

Mr. DEAN. The Exclusive Economic Zone, Congressman, is intended to give the United States exclusive jurisdiction over natural resources of the zone contiguous to the United States like mineral resources mined or produced in the Zone and certain living resources found within that Zone.

Mr. BREAUX. So you are saying that the President's declaration and the Law of the Sea Treaty would only be applicable if in fact it directly deals with extraction of minerals from the Exclusive Economic Zone?

Mr. DEAN. That is what it is intended to reach, Congressman. We are not looking to expand—the U.S. policy is not to expand jurisdiction in the high seas where we do not absolutely have to expand jurisdiction in the high seas.

We do not want to establish a precedent of the United States or other countries expanding——

Mr. BREAUX. I am not talking about navigation. I am talking about a foreign government calling on the artificial island located within our Zone. You are saying—your recommendation, which as I understand is acceptable and what the Senate is saying, is that a country will be willing to consent to our jurisdiction only if they want to while operating within our Zone, calling on a port within our Zone.

What the Senate bill says is that the foreign nation has to be notified and if they do not consent to submitting to our jurisdiction, that is fine. They have a right to say no to them. Is that in keeping with the President's declaration of the sovereign rights within our Zone?

Mr. DEAN. Foreign governments always have the right to say no. The President's declaration of a certain jurisdiction over resources within our Exclusive Economic Zone was fundamentally consistent with international law in this area.

This exercise of jurisdiction in the absence of assent by the foreign government is not viewed by either the United States or the foreign governments concerned as being fundamentally consistent.

Mr. BREAUX. Have we not extended our domestic laws to numerous facilities located within the Exclusive Economic Zone, Federal laws as well? Do not the domestic laws of the United States apply to every artificial island and every facility located on the Outer Continental Shelf outside the territorial limits of the United States? Of course it does.

Mr. DEAN Again, Mr. Congressman, that jurisdiction is related to exploiting the resources of the Outer Continental Shelf.

Mr. BREAUX. OK. Suppose it is just a pumping station. It is not exploiting anything. It is all finished, all done with. They have finished building it; they have finished the development.

Mr. DEAN. If it is the Outer Continental Shelf, Mr. Congressman, my answer remains the same.

I would like to retreat to one fundamental point. Both the U.S. executive branch and foreign governments have views about what the proper exercise of this jurisdiction should be. The Government of France went so far as to specifically provide that nothing in their bilateral agreement with the United States would prejudice their law-of-the-sea position.

I do not know that we need to offer any more than that, Congressman, as to what people view international law in this area to be.

Mr. BREAUX. I respectfully, totally disagree with you. I do not think that is the intent of the President's declaration. I do not think that is the intent of the LOS. I think there is ample language in the Law of the Sea Treaty that points to the fact that it extends beyond just exploiting natural resources as far as the consent regime of the coastal state is concerned. I think you are just dead wrong. And you think I am dead wrong. So we are even.

With regard to FERC——

Mr. ROE. Well, if the gentleman would yield on that point because I think it is important that the committee understand the issue because they are going to have to make a decision. Let me ask you this so I understand. If a tanker calls on New York Harbor, for example, do we have to have a special agreement for that tanker to call there?

Mr. DEAN. No; New York Harbor is within our territory. Other countries recognize our exercise of sovereignty in our territory over vessels that visit our territory.

Mr. ROE. I understand that. What I am trying to get at—and do not consider me dense; maybe I am. What I am trying to get at is, I am trying to differentiate myself. Forget the laws. I am trying to differentiate in my own mind that here we have a situation, and I am familiar with it because I remember the bill when we wrote it; here we have a particular function, call it what you will. It could be a floating port.

It is in our territorial area. Now, why do we not apply the same dictum, the same regimen as you are speaking to to our other ports that we apply to this artificial island? Forget LOOP; any artificial island that is in our territorial area.

Mr. DEAN. If it is in our territorial area, we have——

Mr. ROE. Is this not located in our territorial area?

Mr. DEAN. No, sir. It's 16——

Mr. ROE. It is 16 miles out. What about the 20 mile issue? That does not apply? So, all right. So, that is the differentiation. You are saying that because of the fact that this is not within our territorial waters is the reason you take a different position on this.

Mr. DEAN. Absolutely. Yes, sir. We would not be taking this position if LOOP were within our territorial seas.

Mr. ROE. OK. I see now.

Mr. STANGELAND. May I ask one more question to Mr. Dean. If we adopted the deemed consent to the U.S. jurisdiction language, would that be consistent with France's addendum to their bilateral because if we adopted that and they landed, it would not in any

way prejudice their approach to the law of the sea in any other area, would it?

Mr. DEAN. It is important—whatever the committee does—that we continue to allow for jurisdiction that flows from the bilaterals for those countries with whom we have bilaterals.

For example, if jurisdiction is not at all dependent on the signing of a bilateral agreement, then France or any other country that is concerned about the assertion of that jurisdiction prejudicing its law-of-the-sea position would no longer have as the basis for that jurisdiction a statement preserving its position on law of the sea and for jurisdiction in this area.

So, I suppose it seems like somewhat of a technicality. It is important—that in the case of those countries that feel that the assertion of this jurisdiction is not consistent with their position on the Law of the Sea Convention—that the basis for our asserting jurisdiction be a bilateral agreement whereby they have the opportunity, as signatory to that bilateral agreement, to preserve their position.

Mr. STANGELAND. Well, why not? Or how about this: suppose we just included deemed consent to U.S. jurisdiction for those nations with whom we have no bilaterals? We are not going to throw out the bilaterals.

Mr. DEAN. Well, the other part of this is that as we indicated in our letter of January 12, if we are going to have a regime in addition to the bilateral agreement regime, we would prefer to afford the Government concerned the opportunity to object to our assertion of jurisdiction.

We do not—the United States does not—want to be in a position of unilaterally asserting jurisdiction over vessels based upon the so-called implied consent of the captain, because any country in the world could set up a similar regime and impair navigation a U.S. vessel, even though it is on the high seas in the Exclusive Economic Zone area, which is specifically a high-seas area, if a foreign government decided that it wanted, because of the conduct of a vessel within its Exclusive Economic Zone——

Mr. BREAUX. Will the gentleman yield?

Mr. STANGELAND. Will that country not object——

Mr. ROE. He has not finished his statement yet.

Mr. DEAN. Well, the country could object in the case of LOOP simply by not calling, its vessels not calling. But it is entirely conceivable to me that this could establish a precedent whereby other countries could consider certain conduct on the part of masters of vessels to have assented to the jurisdiction of that country, when it is fundamentally inimical to our interests to have that jurisdiction asserted in those instances.

Asserting jurisdiction has to remain a function of Governments. You can envision situations where a Government could say that the master by doing something, even though that conduct is performed on the high seas or by approaching a certain area, even though it is on the high seas, that he has assented to its jurisdiction. The navigational freedom of U.S.-flag vessels in international waters couldn thus be impaired in ways that are fundamentally inimical to U.S. interests.

Mr. STANGELAND. Thank you. I have other questions.

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Mr. ROE. Does the gentleman have more questions?

Mr. BREAUX. Mr. Dean, you know we are not talking about navigation. We are not asserting jurisdiction over a vessel that is navigating. We are trying to assert jurisdiction over a foreign ship that is moored calling on an artificial island within the jurisdiction of the United States.

Nothing in the bill says anything about us asserting jurisdiction over any ship that is merely navigating through the zone. You are implying to the gentleman that we are somehow restricting the activities of a ship while it is navigating through the zone. Nothing in the legislation affects that ship other than if it calls on a U.S. facility, a U.S. artificial island.

What is wrong, heaven help us, by saying that if a ship, a foreign ship, is going to call on a U.S.-operated facility within our own Exclusive Economic Zone, that we somehow do not have the right to say that our safety laws, our immigration laws, our health laws are going to apply to that facility.

Do you get the distinction? The law does not talk about navigation jurisdiction.

Mr. DEAN. The distinction is based upon conduct.

Mr. BREAUX. Of course.

Mr. DEAN. He is either going to serve the LOOP or he is going to pull up there with the intent of——

Mr. BREAUX. He only submits to the jurisdiction to the United States if he in fact uses or calls upon the offshore facility, the artificial island. Navigation does not make him consent to our jurisdiction.

Mr. DEAN. We are still establishing the principle that the conduct of the pilot, the commercial conduct of the pilot, the use of the vessel, gives rise to implied assent to jurisdiction of the United States. Another Government is free to change that to, say that different conduct will give rise to the same assertion of jurisdiction.

Mr. BREAUX. I will ask you to go back to your law books and do a review on the Law of the Sea Treaty because you are saying, I think, that unless it deals with exploitation of minerals or natural resources within the zone, that somehow nevertheless does not give a coastal state authority to require to consent to their laws.

I am begging to differ with you on that. You are talking about sovereign rights. In article 56 it is true, they are talking about exploration and exportation of natural resources. But you read subsection B, it says in the exclusive economic zone the coastal state—that is, the United States in this case—has jurisdiction with regard to the establishment and use of artificial islands, installations, and structures.

That does not limit that by saying if those artificial islands are used for the exploitation or exploration of natural resources. It says if there is an artificial island located within the exclusive zone, then the coastal State has jurisdiction over those artificial islands as provided. And article 60 tells you what kind of jurisdiction they have. And they talk about immigration, customs, physical health, safety regulations.

So I would ask you to go back and look at that. The first subsection A, which deals with sovereign rights, talks about exploration and exploitation. But subsection B, which talks about jurisdiction,

says we have jurisdiction over artificial islands. It does not limit it by saying artificial islands being used for exploration or exploitation of natural resources.

Mr. DEAN. We would be happy to look at it again, Congressman.

Mr. BREAUX. And I would like to get an explanation back after you look at it. Let us not forget it.

Mr. DEAN. Absolutely. But let me——

Mr. BREAUX. My only other point, Mr. Chairman—I have taken too much time—is in regard to DOT's position on the rate regulation which they, I think, object to in the form that the bill is contained. DOT is not the rate regulator. The Federal Energy Regulatory Commission sets the rates and LOOP feels that it is taking much too long and wants to have that changed.

FERC tells us that I do not object to the proposed elimination of governmental authority to regulate the rates and charges for the facilities subject to the act. Based on my understanding of the Commission's experience, I think there is adequate competition in the transportation of oil by deporting facilities so that traditional rate regulation is not necessary.

Mr. Walsh, I am just curious. I do not understand why DOT, which is not in the rate regulatory business, apparently objects to what we propose when the agency that does in fact set the rates says they have no problems with the change.

Mr. WALSH. I would say that the difference in the two views comes down to this. FERC is looking at the situation as it presently exists and makes a judgment, a judgment that we would make, too, that rate regulation is inappropriate at this time because competition does in fact exist. But looking further down the road to the circumstances which can conceivably develop as the world energy situation turns around to what we once envisioned it to be, that may be 3 years, 5 years, 20 years away; that that rate regulation would then become an appropriate function.

Mr. BREAUX. OK. The bills says that if competition does not exist and the Secretary of Transportation has reason to believe that it does not exist, the Secretary may then request FERC to initiate an investigation to determine whether to reimpose tariff regulations.

Does that provide DOT a clear avenue if conditions change in the future, that all you have to do is call up FERC and say, would you look at this again. We do not think competition exists.

Mr. WALSH. Yes, it would, sir. However, may I suggest that it would be possible to leave the regulatory power and have a one-time application by our only deepwater port to have that regulation lifted under the present economic circumstances. No action would then be necessary until those circumstances change.

We do not perceive a time in which those circumstances would be changed——

Mr. BREAUX. You would have one effective rate under that proposal, would you not?

Mr. WALSH. No, you would not.

Mr. BREAUX. They could charge whatever rate if the conditions were there?

Mr. WALSH. That is right. As long as a state of competition was in effect, the deepwater port, LOOP, could go ahead and charge whatever rate it wanted to.

Mr. BREAUX. What is the difference between that and what the bill says?

Is that not what the bill says?

Mr. WALSH. The bill says that the only way rate regulation could be imposed is if the Secretary of Transportation asks FERC to investigate the need for reimposing regulation.

Mr. BREAUX. OK. And what are you suggesting?

Mr. WALSH. I am suggesting that the rate regulatory authority be retained by FERC against the contingency that it might be needed sometime in the future. As I understand the bill, the rate regulatory authority would be lifted and would have to be reimposed.

Mr. BREAUX. You are saying that they should have it but not exercise it.

Mr. WALSH. That is right.

Mr. BREAUX. OK. I did not know the difference.

Mr. ROE. Are there any further questions of our panel? Mr. Jackson, do you have a comment you wanted to make?

Mr. JACKSON. Mr. Chairman, concerning the discussion between Mr. Breaux and Mr. Dean, from the Coast Guard's point of view, even if we agreed—we do not feel we have criminal jurisdiction over the personnel on the vessel, which we feel is absolutely necessary, and there is no way that we are going to get that without a foreign state consenting to that. And that is a hole in our law enforcement that we consider——

Mr. BREAUX. Do you not have authority now to stop a ship that is navigating through the zone that you think is carrying drugs and does not call on any port within the zone? Do you not have that authority now?

Mr. JACKSON. Yes, but not over the personnel of the vessel.

Mr. BREAUX. You mean you can stop a ship and not make an arrest.

Mr. JACKSON. We do not—we do not——

Mr. BREAUX. Could you arrest a person navigating through the zone that is not calling on any port that is carrying guns? Could you seize that vessel?

Mr. JACKSON. Yes.

Mr. BREAUX. Could you prosecute those people?

Mr. JACKSON. No.

Mr. BREAUX. You could arrest them, but then what are you going to do?

Mr. JACKSON. I think that is usually what we end up doing is sending them back. But we certainly have treaties with countries that would allow us to do that.

Mr. BREAUX. Will you not stop a vessel and you are now checking to see whether we have a bilateral, criminal agreement with a country that is navigating through the zone that you have absolute, positive evidence that has illegal drugs on board?

Mr. JACKSON. Yes, sir, we would.

Mr. BREAUX. That has not been a real problem, has it?

Mr. JACKSON. Well, we prefer to have an agreement with the country of—the vessel that will be at the port; things can happen among the crew members and we want the authority to not only go in and take them but also prosecute them and put them in jail,

which we would not have without the agreement, the consent of that vessel's state.

Mr. ROE. All right. Any further questions on these issues?

[No response.]

Mr. ROE. If not, we want to thank you very much for being with us this morning. We greatly appreciate your testimony.

[Subsequent to the hearing, additional questions were submitted to Mr. Walsh by Representative Stangeland. The questions and responses follow:]

ARLAN STANGELAND
7TH DISTRICT, MINNESOTA

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February 22, 1984

Mr. Richard F. Walsh
Director, Office of Economics
Department of Transportation
400 Seventh Street, S. W.
Washington, D. C. 20590

Dear Mr. Walsh:

You testified today before the Water Resources Subcommittee concerning H.R. 2353, the Deepwater Port Act Amendments of 1983.

A number of questions were not able to be asked during the course of this hearing. Would you please respond to the attached questions and provide a copy of your answers to Mr. Joseph A. Italiano, Public Works Committee Editor, for inclusion in the Water Resources Subcommittee's hearing record.

Additional questions, should there be any, will be forwarded as quickly as possible.

Thank you for your prompt attention to this request and for your excellent Subcommittee testimony.

Sincerely,

Arlan Stangeland
Member of Congress

AS/jdk

Attachment

QUESTIONS FOR MR. RICHARD WALSH

1. SECTION 3 OF H.R. 2353 PROVIDES THAT A LICENSED DEEPWATER PORT SHALL ACT AS A COMMON CARRIER EXCEPT WHERE THE LICENSE IS "SUBJECT TO EFFECTIVE COMPETITION". WHO SHOULD MAKE THIS DETERMINATION, IN YOUR OPINION? HOW SHOULD IT BE MADE, THAT IS, WHAT CRITERIA SHOULD BE USED TO DECIDE WHETHER OR NOT "EFFECTIVE COMPETITION" EXISTS?

2. ON PAGE 6 OF YOUR FORMAL STATEMENT, YOU INDICATE THAT "WE HAVE GRAVE CONCERNS ABOUT THE REGIME WHICH SECTION 5 OF THE BILL WOULD SUBSTITUTE, UNDER WHICH THE VESSEL OPERATOR WOULD BE DEEMED TO HAVE CONSENTED TO JURISDICTION ON BEHALF OF THE FLAG STATE. TRADITIONALLY, THE UNITED STATES HAS OPPOSED THE EXERCISE OF FOREIGN JURISDICTION OVER U.S. FLAG VESSELS BY THIS MEANS." WOULD YOU PLEASE EXPAND ON THAT STATEMENT A LITTLE MORE FOR THE COMMITTEE? ARE THERE ANY OTHER INSTANCES IN FEDERAL LAW OF WHICH YOU ARE AWARE INVOLVING DEEMED CONSENT TO U.S. JURISDICTION BY FOREIGN NATIONS? WHY HAVE WE TRADITIONALLY OPPOSED DEEMED CONSENT TO THE JURISDICTION OF OTHER NATIONS WHEN OUR OWN AMERICAN CITIZENS ARE INVOLVED?

3. REGARDING THE BILATERAL AGREEMENTS, YOU STATE ON PAGE 7 OF YOUR TESTIMONY THAT ANY PROBLEM HAS NOW LARGELY BEEN SOLVED. COULD YOU INDICATE TO THE COMMITTEE WHICH USER OR EXPECTED USERS OF LOOP DO NOT CURRENTLY HAVE BILATERAL AGREEMENTS WITH THE UNITED STATES? FOR THOSE THAT DO NOT HAVE BILATERAL

AGREEMENTS, BY WHAT DATE DO YOU EXPECT SUCH AGREEMENTS TO BE COMPLETED? YOU MAY WANT TO PROVIDE DETAILS FOR THE RECORD, BUT COULD YOU SUMMARIZE PROGRESS MADE TO DATE ON THE BILATERAL AGREEMENTS AND IDENTIFY ANY FACTORS THAT INHIBIT COMPLETING ADDITIONAL AGREEMENTS?

4. DOES THE DEPARTMENT OF TRANSPORTATION HAVE AN ALTERNATIVE ACCESS SYSTEM THAT IT WOULD PROPOSE OR DOES IT PREFER TO MAINTAIN THE EXISTING SYSTEM?

5. ON PAGE 2 OF YOUR TESTIMONY, YOU DISCUSS A SECOND PROPOSED DEEPWATER PORT, THE TEXAS OFFSHORE PORT (TOP). THE OFFER OF A LICENSE HAS BEEN EXTENDED TO JUNE 1984, ACCORDING TO YOUR TESTIMONY. WHAT IS THE CURRENT LIKELIHOOD OF THIS LICENSE BEING ACCEPTED? WHAT EFFECT WOULD THE LEGISLATIVE CHANGES CONTAINED IN H.R. 2353 HAVE ON THE VIABILITY OF THE "TOP" PROPOSAL, IN YOUR OPINION?

6. FOR EACH BILATERAL AGREEMENT THAT HAS BEEN SUCCESSFULLY CONCLUDED TO DATE, PLEASE LIST THE COUNTRY WITH WHOM THE AGREEMENT HAS BEEN REACHED AND THE AMOUNT OF TIME THAT WAS REQUIRED TO NEGOTIATE EACH AGREEMENT.

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

APR 6 ...

The Honorable Robert A. Roe
Chairman, Subcommittee on Water Resources
Committee on Public Works and Transportation
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Enclosed is a letter responding to questions raised by Congressman Stangeland in his letter of February 22, 1984, as a follow-up to the hearing before your Water Resources Subcommittee on H.R. 2353, the Deepwater Port Act Amendments of 1983. If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Rosalind A. Knapp

Rosalind A. Knapp
Deputy General Counsel

Enclosure

U.S. Department of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

APR 6 1984

The Honorable Arlan Stangeland
House of Representatives
Washington, D.C. 20515

Dear Mr. Stangeland:

This letter is in reply to the questions raised during the February 22, 1984 hearing before the Water Resources Subcommittee on H.R. 2353, the Deepwater Port Act Amendments of 1983, and in your letter of the same date to Mr. Richard F. Walsh, Director of the Department's Office of Economics.

1. You asked who should make the determination whether a license is "subject to effective competition" and what criteria should be applied. The determination that a deepwater port is subject to effective competition as a common carrier should rest with the Federal Energy Regulatory Commission (FERC). Effective competition in a regulated industry is a critical factor in the determination of a proper tariff rate. LOOP's current tariff was approved by FERC on the basis of evidence of effective competition provided by LOOP. While the Department of Transportation may be capable of making a determination of the existence or absence of effective competition, the Department is not constituted or staffed as a rate-setting agency and could not make a determination as to the propriety of a tariff.

The criteria to be used to decide whether or not effective competition exists should reflect prevailing conditions in the complex area of crude oil transportation. In the case of the LOOP deepwater port, competition arises primarily from nonregulated modes of marine transportation involving lightering, transshipment, and direct shipment servicing port areas 1/ that are presently connected by pipeline to the LOOP onshore storage terminal. The following are some readily discernible factors to be considered in determining whether or not effective competition exists:

- The rate at which crude oil is imported into the United States.
- The demand for crude oil at port areas connected by pipeline to a deepwater port.
- The condition of the tanker market and rates charged.

1/ Port Arthur/Port Neches, Texas
Lake Charles, Louisiana
Baton Rouge, Louisiana
Convent/St. James, Louisiana
Good Hope/Norco, Louisiana
Alliance/Mereaux, Louisiana

- o The intensity of competition from lightering, transshipment, and direct shipment.

- o The quality of service provided to and accommodation of shippers who are not members/owners of the deepwater port.

- o The fairness, in the event of deregulation, of the fluctuating tariff charged by the deepwater port.

- o The availability of adequate storage and crude oil segregations for all shippers.

- o The degree of readiness to assist in scheduling movements of crude oil with downstream connecting pipelines.

- o Shippers' complaints of unfair or unresponsive treatment.

2. You asked us to clarify and expand our opposition to the imposition of implied consent to U.S. jurisdiction by the flag states of vessels calling at a deepwater port. We are aware of no federal law under which an individual, acting in his or her individual capacity, may waive or be deemed to have waived any rights of a sovereign state. The United States has traditionally opposed waiver of its sovereign rights by its citizens. It cannot allow the legislative act of another government to diminish United States sovereignty without the consent of the United States Government itself. Thus, the United States holds the view that its citizens, acting in their individual capacities, are not competent to waive any of the rights of the United States that result from its sovereignty. If we were to establish through our own legislation a regime whereby citizens of other nations would be deemed to waive sovereign rights of those nations, it would undermine our reliance on the foregoing principle. Therefore, we are opposed to a regime of implied consent because other nations might seize upon the precedent and imply consent by U.S. nationals to foreign jurisdiction on the basis of their conduct. Coastal states around the world might thereby impose any enforceable restrictions they consider desirable. We believe that consent to jurisdiction over persons outside of territorial waters is a matter determined by governments, not individuals.

We consider that the jurisdictional regime established by the President's proclamation on the Exclusive Economic Zone, Proclamation No. 5030, 48 Fed. Reg. 10605 (1983), does not meet the jurisdictional needs of the United States at a deepwater port as well as a regime predicated upon the express consent of a trading partner through a bilateral agreement. We do regard the LOOP facility as an installation or structure having an economic purpose within the meaning of the Proclamation, which establishes jurisdiction over such installation and structures "in accordance with the rules of international law." Id. The 1982 Law of the Sea Convention (not in force; not signed by the United States) contains a statement of the international law of jurisdiction over structures established for the exploitation of the resources of the exclusive economic zone "and for other economic purposes," giving the United States exclusive jurisdiction on the structures with regard to customs, fiscal, health, safety, and immigration matters. This jurisdictional scheme, however, is not intended to provide jurisdiction sufficient to address the requirements of all forms of economic activity that may take place in the exclusive economic

zone, including those associated with the operation of a deepwater port. For example, an installation or structure has no territorial sea of its own. Law of the Sea Convention, art. 60, para. 8. As for vessels and persons not on the structure itself, the Convention speaks only of the establishment of a safety zone--generally limited to a distance of 500 meters (one-third of a mile) from the structure--and the authority to ensure safety of navigation and of installations and structures, and the obligation of navigating vessels to honor safety zones. Id. art. 60, para. 5.

On the other hand, the jurisdiction created by the bilateral agreements with the consent of the other parties applies not only when the vessels are moored at the LOOP facility, but also when they are anchored or navigating in a safety zone established pursuant to the Deepwater Port Act of 1974--nine miles by five miles in dimension--en route to or departing from LOOP. The bilateral agreement safety zone is more than 150 times the area of that provided for by the Convention. Section 19(a)(1) of the Act makes the United States Constitution, laws, and treaties applicable to "activities connected, associated, or potentially interfering with the use or operation of any such port ...." 33 U.S.C. § 1518(a)(1). It may become necessary to assert criminal jurisdiction over activities within the safety zone, including making arrests aboard such a vessel. We believe that this broader jurisdiction, which is not contemplated by the Law of the Sea Convention, is essential to the proper operation of a deepwater port.

Enclosed is a letter from Hugh O'Neill, Representative for Ocean Policy Affairs of the Secretary of Defense and the Joint Chiefs of Staff, commenting on the national security implications of the proposed implied consent jurisdictional regime.

3. You asked for an assessment of the effectiveness of the bilateral agreement system to date, with a discussion of problems and prospects for future agreements. As indicated by our testimony, we believe that the problem occasioned by the requirement for bilateral agreements has largely been solved. We now have 82 percent of the world's tanker vessels (other than U.S.-flag) of over 65,000 DWT 2/ under agreement and eligible to call at LOOP. This number continues to grow as we obtain additional agreements. We are presently seeking additional agreements with Japan, Mexico, and Brazil.

We are prepared to expand our efforts to include other candidate nations that LOOP officials might consider desirable. In the past, the process of obtaining bilateral agreements has been a cooperative one between the government and LOOP officials, who have identified likely prospects and foreign commercial interests who might intercede with their governments. However, since LOOP's decision to seek legislative relief from the bilateral agreement requirement, they have shown less interest in participating in the bilateral process.

2/ Forty-six foreign countries have 1,470 tankers of 65,000 DWT and larger, the minimum size that can practically and economically use the port (see enclosed table). We have bilateral agreements with 19 countries owning some 1,190 of those tankers. A bilateral agreement with Japan would increase the total eligible to call to 93 percent of world tonnage.

The principal factor inhibiting agreements has been the concern of foreign governments resulting from the view that the jurisdiction asserted by the United States over foreign vessels in the LOOP safety zone exceeds that otherwise supportable under international law. Countries having this view are reluctant to enter into an agreement that might later be construed to prejudice their interpretation of international law.

As these concerns have been identified, we have resolved them through the use of an annex to the pro forma notes comprising our bilateral agreements that preserve the position of the bilateral agreement partner with respect to the law of the sea. We are also aware that at least one nation is closely watching the progress of H.R. 2353 and the possibility that the requirement for the bilateral requirement could be deleted. This has influenced its treatment of our proposal for an agreement.

Dates of conclusion of subsequent agreements are difficult to predict. When the international law concerns of a foreign nation are satisfied and the authority of the foreign government to enter into an agreement has been received by its embassy, the formal exchange of notes is accomplished in a few days.

4. You asked whether we propose an alternative to the existing access system. The Department of Transportation prefers that the requirement for bilateral agreements remain as in present law. The need for change has been and continues to be diminished as outstanding countries enter into agreements. If the Committee, after considering this matter, should nevertheless conclude that an amendment is necessary, then we would regard as acceptable the Senate compromise version, which maintains the present system of bilateral agreements but provides for State Department notice to states not parties to bilateral agreements followed by an opportunity for them to object. That language, contained in section 5 of S. 1546, the Senate version of the bill, was transmitted to this Committee by our letter dated January 12, 1984.

5. You asked for a discussion of the status of the Texas Offshore Port, Inc. (TOP). The license offer to TOP was extended to June 21, 1984, because of the drastic drop in crude oil imports in 1982 when TOP expected to start construction of its deepwater port. This port was designed for a minimum daily throughput of 350,000 barrels per day, which volume is currently unavailable. Furthermore, it is reported that the Seaway Pipeline, Inc., pipeline from Freeport, Texas to Tulsa, Oklahoma, which is the backbone of the TOP onshore system, will be sold to Phillips Petroleum Company and converted from crude oil to gas service. In that event, either a new application for a reconfigured deepwater port will be required or TOP will allow our deepwater license offer to expire. We recently asked TOP to provide us with a current statement of its plans. TOP has responded that the future position of the project will be addressed after the sale of the Seaway pipeline.

If TOP were to go forward with a reconfigured project, the legislative changes contained in H.R. 2353 would probably enhance the economic viability of TOP. It should be noted, however, that TOP's license conditions were structured differently from LOOP's to account for each licensee's economic condition and perceived dominance or influence in its respective market area. Because

LOOP is the only deepwater port in the U.S. and there is little favorable prospect for any other deepwater port being built in the near term, however, the issue of uniform license conditions, proposed in section 2(e) of H.R. 2353, is moot.

6. Enclosed is the list of the bilateral agreements currently in force that you requested. We do not have appropriate data on which to base a meaningful or useful answer to the question of how much time was required to negotiate the agreements. As noted above, once a government has decided to enter an agreement, even with an annex preserving its law of the sea position, an exchange of notes can be accomplished in a few days. It has been our policy to expedite the agreement process to the greatest extent practical.

Finally, a question was also raised at the hearing about our ability under international law to board and take law enforcement action with respect to validly registered foreign vessels navigating in our Exclusive Economic Zone, when we have reason to believe they may be carrying illicit narcotics or weapons. We may not board such vessels as a matter of right because that would be an unreasonable interference with the freedom of navigation enjoyed by the nations of registry and inconsistent with our obligations under applicable customary and conventional international law. It is our practice to communicate through diplomatic channels and ask the state of registry for permission to board and, if the circumstances warrant, apply U.S. law. Only after an affirmative answer is received do we act.

Sincerely,

Rosalind A. Knapp

Rosalind A. Knapp
Deputy General Counsel

Enclosures

OFFICE OF THE SECRETARY OF DEFENSE/THE JOINT CHIEFS OF STAFF
REPRESENTATIVE FOR OCEAN POLICY AFFAIRS
WASHINGTON, D.C. 20301

27 March 1984

Jim J. Marquez, Esq.
General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Marquez:

Thank you for affording the Department of Defense the opportunity to comment on the national security implications concerning H.R. 2353 (Deepwater Port Act Amendments of 1983). We agree completely with your analysis in favor of continuing the existing bilateral-agreement approach toward US jurisdiction in these matters. The implied consent regime proposed in H.R. 2353 has far-reaching implications adverse to our global maritime mobility, and thus to our overall national security interests.

Under the Deepwater Port Act of 1979, the United States exercises greater jurisdiction, both qualitatively and geographically, than is conferred by the international law applicable to installations and structures beyond the territorial sea. The shortfall between national and international authority is currently made up through negotiated bilateral agreements wherein other countries consent to the exercise of jurisdiction by the U.S. over their vessels. Abandoning this mechanism in favor of jurisdiction based on "consent" implied from the presence of a foreign-flag vessel at the U.S. deepwater port would set a serious precedent that other nations could use against U.S. interests.

The precedent would open the door to foreign legislation on a host of issues, with implied waiver provisions purporting to bind the United States by the activities of its citizens. Even more problematic would be the precedental impact of the perception that the U.S. had extended its jurisdiction beyond that permitted by international law. In this connection, it is worth noting that the impact of such a precedent is not likely to be limited to merely mirror-image claims by other countries. In the case of the Truman Proclamation on the continental shelf, other countries' claims became much broader than the original precedent, as well as less protective of international rights. In the instance of the H.R. 2353 implied consent regime, the impact could go far beyond questions of jurisdiction over offshore installations, with potential spillover effects, for example, on extremely critical and sensitive navigation and overflight issues. From this perspective, even the compromise approach contained in S.1546 raises serious considerations.

In summary, from both a Transportation and Defense perspective, maintenance of the current bilateral agreement approach for achieving US jurisdictional needs in deepwater port areas should be a high priority. You can count on our every cooperation toward that objective.

Yours sincerely,

HUGH O'NEILL

ENCLOSURE

GENERAL TANKER FLEET UNDER BILATERAL AGREEMENT
(65,000 DWT TANKERS AND LARGER)

Country	Agreement Date	No. of Tankers	Total DWT (Thousand)
Bahamas (Nassau)	Jul 1982	1	87.3
Belgium	Dec 1983	4	314.4
Cyprus	Sep 1983	2	284.7
Denmark	Aug 1978	18	3,720.6
Finland	Oct 1982	10	1,671.2
France	Mar 1983	56	12,913.9
Germany (Fed. Republic)	Sep 1981	21	4,320.8
Greece	May 1982	179	21,383.3
Italy	Jan 1982	27	5,262.3
Liberia	Mar 1979	459	85,221.2
Norway	Jul 1978	109	23,380.7
Panama	Aug 1980	74	10,656.9
Portugal	Jul 1979	7	1,252.4
Saudi Arabia	Jun 1982	20	4,267.6
Singapore	Jan 1984	46	4,257.0
Spain	Nov 1983	40	7,630.6
Sweden	Aug 1978	9	2,644.4
The Netherlands	Nov 1981	18	3,674.9
United Kingdom (and colonies)	May 1979	91	18,373.4
Total		1,190	210,899.9
Total NON-U.S		1,469	258,702.7
Percentage Under Agreement		81	82

Source: Tankers in the World Fleet, As of January 1, 1982
Maritime Administration, U.S. Department of Transportation

Mr. ROE. Our next witness this morning, representing the Louisiana Department of Transportation and Development, is Mr. Norbert R. de Gravelles. And accompanying him is Mr. James C. Webb, the assistant executive director of the Louisiana Offshore Terminal Authority.

We want to welcome you gentlemen to our committee.

Mr. de Gravelles, the full text of your prepared statmement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT BY N. R. DE GRAVELLES, EXECUTIVE DIRECTOR, AND JAMES C. WEBB, ASSISTANT EXECUTIVE DIRECTOR, LOUISIANA OFFSHORE TERMINAL AUTHORITY, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Previously testimony was presented on H.R. 2353 and a companion bill, S. 1546. These bills basically accomplished the same objectives. H.R. 2353, as amended and reported by the House Committee on Merchant Marine and Fisheries on November 9, 1983, is acceptable to Louisiana. We, in state government, believe that this legislation is needed to assist LOOP and we, therefore, offer our support to its passage.

Louisiana citizens, prior to the 1973 oil embargo, thought that development of a project such as LOOP would be the only feasible way to import the tremendous amounts of crude oil which were being projected to supplement our diminishing domestic production. The trend in tankers necessary to transport the projected volumes of crude oil was toward supersized cargo vessels too large to enter ports in the United States. Therefore, when LOOP came into the picture, we openly welcomed this exciting new venture; not only for its economic profitability to the State, but because it would be an environmentally safer way to import crude oil rather than bringing it up the Mississippi River.

During the time of initial planning, environmental issues were receiving an exorbitant amount of attention and weighed heavily on the enactment of laws and the promulgation of rules and regulations affecting licensing of offshore terminal facilities. Numerous safeguards were instituted, many of which are not necessary as the past two years' experience with LOOP has shown. Because LOOP personnel have been good environmental citizens and because conditions have changed, we are able to come before you and support changing the Deepwater Port Liability Fund and other provisions contained within H.R. 2353 as amended.

ENVIRONMENTAL MONITORING PROGRAM

An Environmental Protection Plan developed by Louisiana to meet state legislative requirements was designed to determine if adverse conditions would exceed reasonable and expected impacts. A year before construction of LOOP was initiated, the Louisiana Wildlife and Fisheries Department and the Louisiana State University, Center for Wetland Resources, began intensive monitoring programs covering vegetation, mammals, birds, fisheries, and physical parameters, such as chemicals in the water column, sediments in pipeline zones, and other factors occurring both onshore and offshore.

During the latter period of construction of LOOP, a lawsuit was instituted to stop the discharge of brine into the Gulf of Mexico. The brine was produced as a result of leaching of the underground oil storage cavities which are an integral part of LOOP's activities. During trial of the suit, the state court found that monitoring programs being conducted were more than sufficient to determine if the impact was harmful, or of lasting effect. As part of the evidence during the trial, it was shown that the results, as projected, were within a reasonable level of those which were predicted to occur. While brine is not crude oil, this example illustrates that environmental effects can be reasonably projected.

We will not say that LOOP is free of all problems. There have been oil spills, though none have been what we consider to be of a serious nature. Most spills occurred near the end of construction, when operation was on a trial basis. Since construction has been nearly completed and operational procedures tightened, the chances of spilling oil have been greatly reduced. LOOP reports all spills, even smaller than one pint. The largest spill which has occurred amounted to about 400 barrels of crude oil when two transfer hoses ruptured. The controls designed into the system effectively prevented the discharge of any great amount of oil and LOOP's actions in this situation were more than adequate.

If environmental impacts from LOOP were detrimental to our state's resources, we believe that the monitoring programs would quickly indicate problems, and we would be able to immediately implement corrective measures. At this time no unexpected impacts have occurred to our coastal environment.

LOOP OIL SPILL CONTINGENCY PLAN

An excellent Oil Spill Contingency Plan has been developed for this project. The Plan has received input from the Wildlife and Fisheries Department of Louisiana, the U.S. Fish and Wildlife Service, Louisiana State University's Center for Wetland Resources, the United States Coast Guard, and the Offshore Terminal Authority. The Plan describes exactly what should be done for each of several types of spills, onshore and offshore. A map detailing and rating ecologically sensitive areas, covering nearly one-half the coastline of our state, has been prepared so that precious time will not be wasted deciding priorities if a major spill should ever occur.

In conjuction with the Eighth District Coast Guard and the Gulf Strike Team, LOOP has held oil spill drills as a method of training personnel. In fact, just such a drill was held in July, at which Mr. Webb, Assistant Executive Director, was an observer. Joint drills of this type held in 1981, 1982 and 1983 serve as an excellent vehicle for maintaining trained personnel both for government and private industry.

LOOP has had Texas A&M conduct its world-famous oil spill control school on location in Louisiana. The school is quite informative and serves to provide LOOP personnel with "hands-on" experience.

Utilizing self-owned and hired vessels, LOOP's ability to respond to an oil spill situation is greater than any other known along the Gulf Coast. A specially outfitted 75-foot converted shrimp trawler has been described as "one of the finest applications of equipment for offshore oil spill clean-up operations" by personnel of Oil and Hazardous Materials Simulated Environmental Test Tank (OMSETT) located in Maryland. Besides the 75-foot converted shrimp trawler, LOOP has four other boats, under 26 feet long, dedicated to responding to oil spills. Also, LOOP has three large vessels, one 200 feet long and two 85 feet long, which are always available for responses to spill situations which may occur around the Marine Terminal. LOOP has over 27,000 feet of oil spill containment boom located in strategic locations. More than half of the boom is for offshore service and is kept at the Marine Terminal. In over two years' time, LOOP has not had to exercise the use of much of its equipment except for training missions. Minor spills have occurred but nothing environmentally threatening has happened.

Through our observations, we think that LOOP is continuously striving to acquire and employ the "best available technology" in order to meet its obligations to protect Louisiana's environment.

U.S. COAST GUARD SURVEILLANCE

While no incidents have occurred which have required the clean-up of a significant amount of oil, the cooperation between the U.S. Coast Guard and the Louisiana Offshore Terminal Authority has been excellent. We have been invited to, and have attended, exercises of the Regional Response Team. The RRT is a group of federal and state officials designated to deal with emergency situations involving hazardous materials. We are also regularly informed of Coast Guard activities of the Eighth Coast Guard District and the Gulf Strike Team.

LOTA OVERSIGHT

The Louisiana Offshore Terminal Authority is very much impressed with the reliability of design and construction information on which LOOP was built. We have had access throughout the project to all information and have, therefore, been in a position to know that LOOP has met or exceeded requirements which were established by both the state and the federal governments. LOOP's Quality Control Program was used to verify that equipment and construction were received as specified. LOOP's Supervisor of Environmental Affairs is very cognizant of the need to protect our state's environment. A system of reporting incidents to all state and federal agencies involved in oil spills has been developed which ensures that no incident occurs without having the proper action taken to correct the problem.

A recent example illustrating that LOOP is living up to its responsibilities is shown by repairs which it has undertaken on all of the Single-Point Mooring Buoys. After slightly more than two and one-half years, inspection revealed that seals which were supposed to last ten years were leaking small amounts of oil. LOOP,

without hesitation and at great expense, has taken action to remedy the deficiency. This type of action has been noted whenever a problem has occurred. All actions by LOOP have always been "above board." If a statement of fact is issued by LOOP, we can be certain of its reliability.

As stated earlier, the equipment and training which LOOP has placed in the hands of its employees gives them the ability to handle oil spill incidents of almost any size. Besides LOOP's "in-house" employees, a contractor has been hired to provide additional capability. Personnel of LOOP's oil spill clean-up contractor are involved in all training exercises and drills. Because of this interaction between the two, it is believed that, working as a team, any situation which might develop can be controlled and cleaned up without causing lasting environmental disruption.

CONCLUSION

We have carefully reviewed the provisions contained within the amended version of H.R. 2353 and have found the proposed amendments to the Deepwater Port Act of 1974 consistent with requirements necessary to protect our state's environment. Because of the oversight which our agency, the Louisiana Offshore Terminal Authority, and the U.S. Coast Guard have over the day-to-day operations, and also because of LOOP's proven record as a good environmental citizen; we know that the maintenance and operations of LOOP will continue to be exemplary. Therefore, we support the legislation contained in H.R. 2353 amending the Deepwater Port Act of 1974.

Mr. ROE. Please proceed.

TESTIMONY OF NORBERT R. de GRAVELLES, EXECUTIVE DIRECTOR, LOUISIANA OFFSHORE TERMINAL AUTHORITY, LOUISIANA DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JAMES C. WEBB, ASSISTANT EXECUTIVE DIRECTOR, LOUISIANA OFFSHORE TERMINAL AUTHORITY

Mr. DE GRAVELLES. Do you want me to just give a summary or do you want me to go through the whole thing?

Mr. ROE. Well, I think maybe if you give a summary, because I think we now understand the background of the issue.

Mr. DE GRAVELLES. Our experience with LOOP people during the past 5 years has indicated that they are good environmental citizens. While minor oil spills have occurred, no major problems have developed. Environmental monitoring started a year prior to construction and has indicated an absence of significant adverse impacts.

Environmental monitoring programs conducted by the Louisiana Wildlife and Fisheries Department and Louisiana State University Center of Wetland Resources will continue for the life of the project.

The monitoring program should quickly indicate environmental problems at their earliest stages. Should environmental problems occur, corrective measures will be prescribed immediately.

An excellent oilspill contingency plan has been developed for this project. Regular training exercises are conducted by LOOP personnel to insure that they are adequately prepared to react to and control emergency situations. Adequate oilspill and cleanup equipment has been acquired and is maintained by LOOP in strategic locations near where more significant mishaps could occur.

Very little of the equipment has been needed to clean up oilspills since May 1981 when LOOP went operational. Because of our close association and good experiences with LOOP, we support the proposed amendments to the Deepwater Port Act of 1974 as contained within the amended version of H.R. 2353.

Mr. ROE. Fine; that is clear and concise.

Does anyone have any questions? The gentleman from Minnesota.

Mr. STANGELAND. Thank you, Mr. Chairman. Mr. de Gravelles, in your summary, you indicated minor spills have occurred, although no major problems were experienced. Would you provide for the committee a history of the number of spills that have occurred and, in each instance, the approximate amount of oil spilled and the necessary cleanup costs and activities that were required in response to those spills?

Mr. DE GRAVELLES. Well, I think the largest spill we have had—they report to us even if there is a spill of a pint; a spill that small is reported to us. The largest spill we have had has been one of about 400 barrels when two hoses in high wind broke loose.

Mr. STANGELAND. If you would provide to us for the record the spills and the cleanup costs connected with those spills.

Mr. DE GRAVELLES. Do you want us to give you right now——

Mr. STANGELAND. No, for the record.

Mr. DE GRAVELLES. Provide it later on, yes, sir; no problem, no problem. But the largest spill we have ever had out there has been only 400 barrels.

Mr. WEBB. Mr. Stangeland, I think that the more appropriate source of that information would be LOOP, since they do report this, but they also are the ones who have cleaned up the spills and have borne all of the costs. It has not been that many spills, but it would be more appropriate for LOOP to provide that to the committee.

We do have the number of spills; we do not have the cost of the actual cleanups.

[See LOOP letter, page 70.]

Mr. STANGELAND. You indicate also that environmental monitoring programs are being conducted by the Louisiana Wildlife and Fisheries Department and by the Louisiana State University.

Would you provide as well for the committee details of how those programs are structured, how they are financed, and what their monitoring limitations are?

Mr. WEBB. Yes, sir.

Mr. STANGELAND. Thank you.

Mr. ROE. Are there further questions?

Mr. BREAUX. Mr. Chairman, I would just like to say how we appreciate the members of the Commission being up here. They are doing a good job monitoring this thing and we are glad to have them as witnesses.

Mr. ROE. While I have got your ear, so to speak, what do you feel about this idea—would LOOP be better to answer the delays in these negotiations with other countries?

Mr. DE GRAVELLES. My personal opinion is I think we should go forward and do everything we can to get these ships in there. We need them and that is going to be an important part here in a position where they need the additional business.

It is the safest way for us to bring oil into this country because we are 20 miles out. Spills are away from the river; otherwise, they come up the Mississippi River and you have got a lot more chance

for spills up there. So we need to bring as much oil as we can through the port. That is my personal opinion.

Mr. ROE. The gentleman from Minnesota.

Mr. OBERSTAR. There have been no major oilspills. Have there been any minor spills, and what precautions are in effect to guard against accidental spills?

Mr. DE GRAVELLES. The largest spill we have had has been 400 barrels on an empty platform, which is not a large spill at all.

Mr. OBERSTAR. You mean they knocked over a container?

Mr. DE GRAVELLES. No. In high winds, the hoses were broken and we had a spill there, but the minute that does, there is an automatic cut off on it.

Mr. ROE. Further questions?

[No response.]

Mr. ROE. Thank you very much for taking the time to be with us; we appreciate your testimony.

Now, our next witness, representing the Louisiana Offshore Oil Port, will be Mr. William B. Read, the president. Mr. Read, we want to welcome you.

Mr. Read, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF WILLIAM B. READ, PRESIDENT OF LOOP, INC.

I am William B. Read, President of LOOP Inc., the only deepwater port constructed and operating under the Deepwater Port Act of 1974. With me are Thomas P. James, General Counsel of LOOP, and Gordon Arbuckle, our Washington Legal Representative.

LOOP supports H.R. 2353 as amended and reported by House Committee on Merchant Marine and Fisheries, Rept. 98-519, Part I, on November 9, 1983. It does so for three main reasons. First, the Bill will replace a restrictive rate-making process with the free market, allowing us to respond more effectively to the substantial tanker competition LOOP faces. Second, the Bill will place deepwater ports on a more competitive footing with coastal ports by eliminating discriminatory provisions with regard to financial responsibility for oil spill liability and so encourage the use of the safer deepwater ports. Third, the Bill will streamline deepwater port regulation, allowing deepwater ports to compete more effectively.

First, a word of explanation about LOOP Inc., which owns and operates the Louisiana Offshore Oil Port (LOOP). LOOP's offshore facilities are located 19 miles off the coast of Louisiana. The deepwater port enables tankers to unload safely beyond the congestion of coastal waterways and ports. The cargoes are then delivered by pipeline to an underground storage terminal located 28 miles inland. From that terminal, other pipelines provide connections to refineries located along the lower Mississippi River; at Lake Charles, Louisiana and Port Arthur, Texas; and, by a connection to Capline, to refineries located in the midwest.

LOOP began operations in December 1981, and since that time throughput has averaged 301,000 barrels per day, and in its best month, 585,000 barrels per day. These levels are well below LOOP's cash breakeven point of 700,000 barrels per day, and far below LOOP's designed operational capacity of 1,400,000 barrels per day. As a result of these low throughputs, LOOP suffered operating losses, without including depreciation expense, of over $40 million in 1982. These operating losses continue in 1983 and seem likely to continue unless LOOP can be put in a position to compete more effectively.

I. RATE REGULATION

One of LOOP's primary concerns about the present Deepwater Port Act is that rates are subject to elaborate regulation by the Federal Energy Regulatory Commission (FERC), even though as a practical matter, the rates which a deepwater port can charge are set by competition. The rates set by such competition are substantially below the maximum rates chargeable under FERC rate-making principles.

Thus LOOP has the worst of both worlds—all the burdens and delays of setting its rates through FERC, and all the demands of functioning in a highly competitive market for crude oil transportation. This combination is threatening the economic viability of LOOP while serving absolutely no public interest.

LOOP faces substantial direct competition from unregulated tankers and barges unloading oil at other coastal port facilities. In addition to the use of LOOP the usual methods of landing crude oil in the Gulf include direct shipment, lightering, lightening and transshipment. Direct shipment involves small tankers which can dock directly at inland ports, refinery terminals, or the Capline terminal for further pipeline delivery into the midwest. Lightering involves the transfer of cargoes at sea from very large tankers (VLCCs) to barges or smaller tankers for direct delivery. Lightening is essentially a partial lightering, whereby enough oil is taken off the tanker to reduce its draft to the point it can proceed upriver. Transshipment involves delivery by VLCCs to ports in the Caribbean and transferring these cargoes to smaller tankers which may proceed directly to inland ports. In essence, LOOP competes with all the unregulated barge and tanker movements for the last 100 miles of their voyage up the Mississippi River, the Calcasieu River, or the Sabine River.

The transshipment terminals, and barge and tanker operators with whom LOOP competes, are unregulated. They do not publish tariffs. They are sensitive to competition and can adjust their rates on a contract by contract, charter by charter, or tow by tow basis. While keeping their own prices confidential and pricing incrementally, these operators have an added advantage in that they are able to ascertain what they can charge by obtaining copies of the published LOOP rates with which they compete.

The waterborne competition that LOOP faces varies in intensity according to the source of the crude oil. LOOP is designed to handle VLCCs which are economical to use only on long haul movements, such as from the North Sea, Persian Gulf or North and West Africa. On shorter haul movements, such as from Mexico, Panama or Venezuela, the most economical means of delivery is by a smaller tanker which can proceed directly to inland ports. LOOP has handled some short-haul cargoes, but given current depressed tanker rates, there is probably no tariff which LOOP can economically charge which would allow it to compete, except in special circumstances, on such short haul movements. The primary market in which LOOP can compete is the crude oil market from long haul sources. In that market LOOP must meet or better the rates of the unregulated barges, tankers and Caribbean transshipment terminals.

Competition for these distant cargoes has intensified because the United States now receives a smaller portion of this crude oil from distant sources and a greater portion from nearby sources, such as Mexico or the North Sea. George S. Wilbert, Jr. recognized this in his book "U.S. Oil Pipe Lines," American Petroleum Institute, 1979 (p. 151): "All that it will take for it [LOOP] to go under will be large scale importation of crude from Mexico where VLCCs will not be a factor as they are in liftings from the Persian (Arabian) Gulf. . . ."

LOOP also faces substantial indirect competition. Foreign crude supplies are generally used to fulfill the shortfall of domestic production to meet United States' refining needs. To the extent that domestic production increases or United States' refining needs decrease, demand for foreign crude oil will decrease. Declining United States' refinery utilization has reduced the imports of crude oil from over 6.6 million barrels per day in 1977 to 3.3 million barrels per day in 1982.

Foreign refiners also compete indirectly with LOOP. Several oil-producing nations have expanded their refining capabilities and others have announced plans to do so. LOOP cannot handle refined product imports, so its market is further reduced by increases in such imports.

LOOP has no monopoly power. Unlike public utilities, LOOP has no captive market for its service. There are no significant barriers to entry for any barge or tanker company to compete with LOOP in the landing of crude oil.

LOOP's operating history bears out this point. LOOP's average throughout has been 301,000 barrels per day, less than 20% of operational capacity. During the same time, imports by refineries which could be served by LOOP were in excess of 1,200,000 barrels per day. Obviously, LOOP has not dominated this crude oil transportation market.

For these reasons—substantial direct and indirect competition and lack of monopoly power—LOOP believes that deregulation of deepwater port rates is in the public interest. The conviction that the deregulation of oil pipelines should be considered by Congress was strongly expressed by FERC in its recent decision on the *Williams*

case stressing that present rate regulations are cumbersome, ineffective and not in the public interest where market competitive forces can be used.

II. DEEPWATER PORT LIABILITY FUND

H.R. 2353 takes a different approach to the Deepwater Port Liability Fund. As amended, H.R. 2353 suspends collection of the fee by reducing the size of the Fund and capping it at an amount somewhat lower than is now contained in the fund. We support this approach.

The bill does not change the stringent environmental and safety requirements a deepwater port must meet, nor do they change the licensee's liability under the Deepwater Port Act for oil spill cleanup costs and damages. Under current law, deepwater ports are liable without fault for a maximum of $50 million per spill, while onshore ports are liable without fault for a maximum of between $8 million and $50 million, depending on the size of the port facility.

Deepwater ports also must make a showing of financial responsibility (insurance coverage and self-insurance) as established by the Secretary, and the Secretary has set this level at $150 million in LOOP's case. Again we stress that this Bill would not alter these more stringent environmental liability and insurance requirements which deepwater ports must meet.

Furthermore it should be emphasized that the Deepwater Port Liability Fund is an account of last resort. Primary liability and responsibility for cleanup rests on LOOP and the owners of the vessels. They come first, ahead of any Federal cleanup fund. LOOP's liability for oil spills and its responsibility for cleanup costs and damages are insured. The policy carried by LOOP provides coverage of $150 million per occurrence ($5 million deductible) and $225 million annual aggregate protection. This protection may be reinstated should the maximum aggregate be fully used in less than one year. This insurance was required by the Department of Transportation in 1980 as part of LOOP's demonstration of financial responsibility to meet the liabilities imposed by the Deepwater Port Act for damages and cleanup cost resulting from a discharge of oil.

To date, the Deepwater Port Liability Fund has not been called upon for oil spill cleanup at LOOP, nor has LOOP made a claim against its oil spill insurance.

When the Deepwater Port Act passed in 1974, we were told not to worry about discriminatory impact because there would soon be an oil Super Fund act which would put all oil ports on an equal footing. It is now nearly ten years later. We are still the only oil port with a special contingency fund. We are losing money and still putting almost 10 percent of our gross revenue per barrel into a special fund which is highly unlikely to ever pay out a penny to anyone. This is an unfair and counterproductive situation and clearly needs changing.

Shippers view the two-cent-per-barrel fee as a significant impediment to use of the deepwater port, adding almost 10 percent to the cost of that service. This fee thus encourages the use of cheaper but riskier onshore ports.

Under these circumstances, suspension of collections for the Deepwater Port Liability Fund would seem appropriate, as it would remove an unjustified preference for riskier onshore ports and still provide ample resources in the unlikely event of an oil spill cleanup which LOOP and it insurers could not handle.

III. STREAMLINING AMENDMENTS

On the basis of LOOP's experience, I would like to comment briefly on other changes which could reduce unnecessary regulatory burdens and allow us to compete more effectively.

Under the present Deepwater Port Act, the United States must conclude a separate bilateral agreement with the flag state of every vessel that wishes to use LOOP. This requirement has forced us to turn away several tankers. Depending on tanker size, loss of revenues resulting from inability to accept a cargo from one vessel can range up to $750,000. This impediment obviously makes it more difficult for us to compete, and, now is unnecessary under international law since the United States has recently asserted jurisdiction over an Exclusive Economic Zone extending 200 miles to sea. We support section 5 of the bill, which would eliminate this unnecessary impediment.

Section 2 simplifies the procedures for amending and transferring licenses, and would make minor adjustments far easier to make. This would permit us and the Coast Guard to adjust more easily to changed circumstances, without repeating the lengthy 18-month process for obtaining our initial license. It also assures that licensees are treated equally, and that the Department of Transportation imposes uniform license conditions insofar as is practical. This is simply an assurance of funda-

mental fairness, one that would allow LOOP to compete on the same terms as any other deepwater port constructed in the Gulf of Mexico.

The license term is changed to coincide with the useful life of the deepwater port. Under current law, the term is twenty years, with a preferential right to renew for an indefinite number of ten-year terms. This change would reduce financing uncertainties for licensees and relieve the Secretary and the licensee of the pointless and costly exercise of relicensing the facility at ten-year intervals.

CONCLUSION

In conclusion I would like to point out that the Deepwater Port is a major asset to the United States in reducing the environmental risks and increasing the efficiency of importing foreign crude oil from distant sources. Our ability to maintain this asset over the near term may depend in large part on the removal of the competitive impediments referred to in my remarks. H.R. 2353, as amended, goes a long way in this direction. We support its prompt passage.

I am happy to answer any questions the Committee might have.

Mr. ROE. Please proceed.

TESTIMONY OF WILLIAM B. READ, PRESIDENT, LOUISIANA OFFSHORE OIL PORT, ACCOMPANIED BY JACK WHITE, MARATHON PETROLEUM CO., INC.

Mr. READ. My colleague is Jack White. He is a representative of our largest shareholder, Marathon Petroleum.

When the Deepwater Port Act was passed in 1974, the United States was importing 3.5 million barrels of crude oil per day, and we expected that imports would increase to 12 million barrels a day by the early 1980's.

To the contrary, crude oil imports have decreased from about 6 million barrels a day at the time LOOP commenced construction to approximately 3 million barrels per day at the present time.

Because of this shortfall in anticipated total imports, LOOP is operating at a rate far below its design capacity of 1.4 million a day. Since December of 1981, LOOP throughput has averaged about 300,000 barrels per day, and this level is far below LOOP's cash break-even point of around 700,000 barrels per day and we continue to suffer operating losses through 1983.

This loss will continue unless we can compete more aggressively to obtain additional business or substantially reduce our costs of operation. Unfortunately, these objectives are impeded by certain requirements of the Deepwater Port Act.

This act imposes some major restrictions on LOOP's ability to compete. We are subject to burdensome rate regulation. We are precluded by outmoded jurisdictional restrictions from servicing a large number of ships. These tankers fly the flags of 29 different countries and represent about 10 percent of the world's fleet that can call at LOOP.

When the act was passed, it was thought that LOOP might be in a monopoly position and its rates would, therefore, have to be regulated. Experience has shown that nothing could be further from the truth.

LOOP is highly regulated like a monopoly, but subject to fierce and unregulated competition in the marketplace. Rates must be adjusted constantly to meet this competition, but we are unable to do this because of our FERC tariff filing requirements. It takes approximately 45 days for us to change our rates, while an unregulated competitor can change their rates instantly.

Under the present act, LOOP is prohibited from serving a tanker unless a bilateral agreement is in effect between the United States and the vessel's flag country. The requirement for these agreements was based on international laws that existed in 1974. Developments since then have made this requirement unnecessary.

One of the major, unnecessary costs of using LOOP is the 2-cent-per-barrel contribution to the Deepwater Port Liability Fund. This amounts to about 10 percent of our present low tariff level. LOOP is a far safer way of bringing oil into the country than any of the competitive modes. Yet, our shippers pay 2 cents per barrel and theirs do not.

LOOP is a major asset in the United States in reducing environmental risks and increasing the efficiency of importing foreign crude oil from distant sources. Our ability to maintain this asset over the near term may depend upon the enactment of this bill.

H.R. 2353, as amended and reported by the House Committee on Merchant Marine and Fisheries on November 9, 1983, will provide LOOP with the flexibility to remain competitive and provide an environmentally sound method for importing crude oil, and we support its prompt passage.

Mr. ROE. Well, thank you. For further elucidation, in the first paragraph you speak to the original design capability as 12 million barrels and now it is reduced down to roughly 3 million barrels per day. Is that right?

Mr. READ. The projections of the amount of crude oil coming into the country were 12 million barrels a day by the mid-1980's and right now that is definitely not the case.

Mr. ROE. But what is the capability of the system you have in now to process? Suppose we did not have a problem; suppose there was a lot of oil available to come in. What could that facility process, its optimum yield?

Mr. READ. We are dependent upon the ship's pumping rates, and normally a ship can pump off——

Mr. ROE. It is variable?

Mr. READ. It varies, yes, because the large ships can pump off at higher rates than the smaller ships.

Mr. ROE. Do you accommodate both small and large ships?

Mr. READ. Yes.

Mr. ROE. You are not just stuck with huge tankers?

Mr. READ. No. The smallest size tanker we handle is a 50,000-tonner and the largest is 500,000.

Mr. ROE. As I interpret your testimony, you make a number of statements. You are saying, number one, that because of the location of the facility, from an enivronmental point of view you can maintain more effective control simply because it is not, as I believe Mr. de Gravelles testified, directly in a port with land directly related. You have a better control of the situation as far as the environment is concerned. Is that a fair statement to make?

Mr. READ. When you unload a ship 20 miles offshore, if there is an oilspill, heaven forbid, that oil spill is spilled 20 miles offshore and not at a dock on the river close to a congested port area.

So the safety of unloading crude cargoes 20 miles offshore, from a safety standpoint and from an environmental standpoint, is much better.

Mr. ROE. So, therefore, it is a prime environmental asset to the country. Is that a fair commentary to make?

Mr. READ. Yes, sir.

Mr. ROE. Why do you think more people are not using your facility than are at the moment? I realize there is a glut in the market, but I mean why would they go to other surrounding ports rather than come to you? Is that the 2 cents per barrel?

Mr. READ. Part of it is the 2 cents per barrel; part of it is the tariff. Our competitive tariff is competitive for ships coming from long distances, but it is marginally competitive for short-haul business.

Mr. ROE. What you are looking for is more flexibility on being able to control the tariff without going through the drill of 45 days notification to FERC and the whole bit, is that right?

Mr. READ. Right.

Mr. ROE. Your competition does not have to go through that drill is basically what you are saying?

Mr. READ. Yes.

Mr. ROE. So that constraint, together with the 2 cents a barrel—well, let me ask you this; I think that question came up. What has been the cost of your largest spill? How much was involved in cost?

Mr. READ. Actually, we were not in a position to clean up that spill. There were 8-foot seas and I was out there about 3 hours after the spill took place. We flew over the area and could hardly see any evidence of any oil, and it would have been impossible to clean up, in any case. So, there were no costs in cleaning up that oil.

Mr. ROE. It dissipated?

Mr. READ. It dissipated.

Mr. ROE. Have you had any expenditures on cleanups at all?

Mr. READ. We were able to clean up one spill. We have equipment that is continually manned to go out and clean up oil spills. We have a specially designed shrimp boat which we can use to clean up oil spills with, and we have been able to clean up one oil spill with that boat and, I think, picked up somewhere around 10 or 15 barrels.

But, generally speaking, when we do have a spill it is basically a sheen on the water and there is no possible way that we could clean up that sheen.

Mr. ROE. Well, as I understand it——

Mr. READ. We have no claims against the Fund.

Mr. ROE. No money has been expended out of the Fund that you are aware of?

Mr. READ. No, no.

Mr. ROE. OK.

Mr. READ. We have liability for the first $50 million of expenditures and the fund takes over after $50 million has been spent.

Mr. ROE. What does that cost you? Do you mind my asking that? That is insurance, I assume.

Mr. READ. That is insurance.

Mr. ROE. What does it cost you, just out of curiosity?

Mr. READ. We do that through an oil insurance policy, which is basically self-insurance.

Mr. ROE. OK.

Mr. READ. Our premiums cover, also, property damage.

Mr. ROE. What do the premiums run?

Mr. READ. They are running in the neighborhood of $400,000 a year.

Mr. SNYDER. Does that policy have a deductible? [Laughter.]

Mr. READ. Yes, it does, a $5 million deductible.

Mr. ROE. Well, when we speak of maintaining the $4 million level, that is in addition to the $50 million——

Mr. READ. Actually, our policy is for $150 million; that is our limit.

Mr. ROE. But you are responsible for the first $50 million is what you are saying?

Mr. READ. Right. Under the law, we are responsible for the first $50 million.

Mr. ROE. So, therefore, if that fund was maintained at the $400 million we talked about, plus $50, you are talking $450 million, is that not correct?

Mr. READ. Actually, our insurance covers $150 million and the Fund would take over after our costs were expended.

Mr. ROE. I am trying to get at this. From the information available to us, it is quite a reserve fund at that level without going further.

Mr. READ. Yes.

Mr. ROE. So, in effect, what we would be talking about is suspending the 2 cents or whatever. I do not know how the bill reads now. Is it suspended?

Mr. BREAUX. Suspended from the date of enactment.

Mr. ROE. Unless it is needed to replenish the Fund, unless it goes before the 4 million, is that correct?

Mr. READ. Yes.

Mr. ROE. All right. So, if we had any major oil spill that required a $1 million or $1½ million, then you would have to reimpose the 2 cents per barrel to build that fund back up again?

Mr. READ. Yes.

Mr. ROE. The gentleman from Minnesota.

Mr. STANGELAND. Mr. Read, in your statement you indicate that because of the current requirements for bilaterals, you are precluded from servicing 264 tankers from 29 countries.

Mr. Walsh has testified that in recent months agreements have been reached with Belgium, Spain, Cyprus, and Singapore. He indicated that Turkey, Japan, Brazil, and Mexico are also in various stages of negotiations.

To what extent do your figures reflect or not reflect the progress that has been made in recent months as described by Mr. Walsh?

Mr. READ. I would concur with what Mr. Walsh said. They have made some good progress during the last 2 or 3 months. They have signed up three countries that we had asked them to sign up. However, there are still 29 countries that have tankers that could call at LOOP that we do not have agreements with, Japan being the largest.

Mr. STANGELAND. So the numbers given to us today are the numbers that are after all of the agreements have been signed?

Mr. READ. Yes.

Mr. ROE. Will the gentleman yield?

Mr. STANGELAND. Yes; I would be happy to yield.

Mr. ROE. If there are 29 potential countries, why do we not go and just file with the 29 countries?

Mr. READ. I think we have been talking with Japan for some——

Mr. ROE. No; that is not my question. To get the optimum yield out of this facility, according to the question of Mr. Stangeland there were 29 different countries that could be using this facility if they wanted to. Why would we not just go and file for the 29 countries?

They would tell us if they were or were not interested. If we do them one at a time, that is going to take 29 years.

Mr. READ. We do not have diplomatic relations with some of the countries.

Mr. ROE. Well, let us bring up that question. So there is no potential there for bilateral, formal agreements?

Mr. READ. No; Poland, Russia, Iraq.

Mr. SNYDER. The 29 countries that you mentioned, how many of these have the supertankers that would require calling at the LOOP if, in fact, they wanted to come into the east coast of the United States, and how many of them might be tankers that could and possibly do call at other shallower ports?

Mr. READ. I would have to go back and check the records on the size of the ships that they have, but we have a listing of all of the countries and the number of tankers. For instance, we have no agreement with Kuwait and they have 11, and I am sure those 11 are supertankers.

Mr. SNYDER. Some of these 29 are presently calling at east coast ports with shallower tankers, is that not correct?

Mr. READ. Yes, for lightering off in the gulf.

Mr. SNYDER. Yes, but so far as many of them are concerned, it is a question of you wanting to be competitive with other ports on the east coast of the United States, as opposed to them needing the deepwater facilities, is that correct?

Mr. READ. Yes.

Mr. SNYDER. Would you supply us with that list for the record?

Mr. READ. I will. [See page 70.]

Mr. ROE. Well, again, let me ask a question. If we do not have an agreement with these countries and they can still call on our ports, following the discussion that was started by the gentleman from Kentucky, they do not have to go through that drill.

In other words, if they came to—I will not use New York; I have to be careful there. [Laughter.]

Let us take another one; let us take Philadelphia. Even that is a little close.

Mr. BREAUX. The Port of New Orleans.

Mr. ROE. The Port of New Orleans; we will keep it in Louisiana.

If they had to make a decision, the captain of that vessel, and he did not have an agreement with the United States, he could still call at that port?

Mr. READ. Yes.

Mr. ROE. So what is the difference?

Mr. BREAUX. I am on your side.

Mr. READ. We think it is an unnecessary restriction on commerce.

Mr. BREAUX. If the Chairman would yield, the difference, the gentleman this morning would say, is that they are calling on a traditional port that is within the territory of the United States, and calling at a deepwater port is not within our territorial waters; it is outside the 3-mile limit, but it is still within our Exclusive Economic Zone.

Mr. ROE. Well, if the gentleman would yield, that is the point I am trying to get at. It seems to me that we ought to consider just making a declaration of law that if a floating port is in our economic zone, it would be treated the same as any other port.

Is that not a reasonable solution to this issue?

Mr. BREAUX. Yes.

Mr. ROE. So one speaks not to the navigational debate; one speaks not to the jurisdiction in that direction. One speaks to a different economic designation of that port.

Mr. SNYDER. If the chairman would yield further, I think that perhaps there might be some logic to what——

Mr. ROE. God forbid there should be logic. [Laughter.]

Mr. SNYDER. Well, it might be a new type of morality for the Chairman. [Laughter.]

Mr. ROE. You are probably right.

Mr. SNYDER. I think there may be some logic to pursuing what you are saying and getting to the point that this thing is connected to the continental United States.

Mr. ROE. Well, it literally is.

Mr. SNYDER. I think, you know, the pipeline comes in. But if I remember when we originally worked on the Deepwater Port Act over at Merchant Marine and here, too, it was because we wanted to get the supertankers in. But now, of course, we are talking more about competition with other ports.

But I think there could be some differentiation.

Mr. ROE. Exactly. In other words, if we were to want to help Louisiana, if we were to restate the facility as, in effect, being a land-based facility because the only way you can deliver the oil from the location of the floating island is through the cord that connects it to the land, we could consider it by making it a declaratory statement; that is, a port facility because it is fixed to the continental United States.

Mr. SNYDER. I do not know how we get into the legal things, but it looks to me like that logic needs to be pursued in connection with what you are saying.

Mr. READ. They have defined a port in the act as being to the high-water level.

Mr. ROE. Well, if the gentleman would yield, rather than get into the details, I think that the wisdom of the committee starts to generate a new approach. If the problem has arisen on these agreements based upon the point of view that it conflicts with other laws, let us not conflict with the other laws.

It seems to me if we move to a declaration of what it is as part of an adjunct to our existing ports or consider it an existing port simply because it is not viable unless it has a pipeline going to the land. There would be no purpose to that and we could consider it in that direction. That is worth pursuing.

Any other questions? The gentleman from Louisiana.

Mr. BREAUX. Mr. Chairman, Mr. Oberstar and I were discussing it and he asked me a question. You all have pointed out that you have lost $40 million in 1982, and I presume 1983 would probably be somewhat similar. What was it in 1983?

Mr. READ. We cut our losses in half to $20 million.

Mr. BREAUX. You had losses, also, in 1981?

Mr. READ. We were under construction at that point.

Mr. BREAUX. What has happened to those losses? Mr. Oberstar has asked: Who has picked up the losses?

Mr. READ. We have arrangements with the owners whereby if we need cash, they forward the cash to us as prepaid transportation credits on future shipments.

Mr. BREAUX. In other words, the owners of the port are eating the losses in operating the port?

Mr. READ. Yes.

Mr. BREAUX. Of course, your testimony and questions from the members have brought out the problem. The bill that was reported from Merchant Marine and that is now referred to Mr. Roe's subcommittee, I think, really addresses the problem of the implied consent, because it talks about any foreign state ship calling or otherwise using a deepwater port that is licensed under this act is considered to have consented to the exercise of the jurisdiction of the United States over the vessel and its personnel under the provisions of this act.

We are talking about a deepwater port that is connected to the coastal shore of any State in the United States; it is a direct connection to the coastal State. I think that approach is what we are trying to accomplish.

Mr. SNYDER. If the gentleman would yield, I was conferring with counsel over here and it seems as though we might be able to come up with some language to do away with this being territorial sea by a redefinition of a port as being as far out, in effect, as the pipes go.

Mr. BREAUX. Yes.

Mr. ROE. Well, if the gentleman would yield on that point, there is logic to that—you will pardon the euphemism—because you——

Mr. SNYDER. You like the reference?

Mr. ROE. You have complimented me beyond my dreams today. What is the depth of the water at this port?

Mr. BREAUX. A hundred and twenty feet.

Mr. ROE. Well, if I am not mistaken, we have a similar situation existing in the deep ports off of the northwest coast; they are very deep up in that area. There are other ports that have those kinds of depths on the west coast.

Therefore, if the depth is a controlling factor, it certainly would not be pinpointed as a particular remedy to this particular situation. It would be something we could state as a position as far as our whole port system is involved.

Mr. BREAUX. I would say to the gentleman the real concern is not how deep it is, but how far out it is.

Mr. SNYDER. That is right.

Mr. BREAUX. If it is up to 3 miles, it is clear it is within the territory. What we are doing is exercising jurisdiction outside of 3 miles.

Mr. SNYDER. In effect, what we are doing is we are extending our land, in effect, out as far as we run these pipes. It is almost like if we would fill dirt out to there; then we would still have 3 miles beyond, if I understand you correctly.

Now, we are not going to put dirt out there; we are not going to fill it. We are going to run a pipe out there and that is part of our land. Counsel seems to think there is some reason that would work, and that might help solve DOT's problem.

Mr. BREAUX. I think what we have clearly in the bill is something that is consistent with the current state of international law as far as a coastal State having a foreign state consent to their jurisdiction if they are calling on these ports, in this case, an artificial island.

I am trying to think if there is any other area that I wanted to ask you gentlemen about here. The problem with FERC really has been the time delay for you to actually lower your prices to be charged to compete with other modes of transportation.

What other modes of transportation are currently available that do not have to go to FERC to have their rates reviewed through a hearing and then approved by FERC before they can start charging their customers?

Mr. READ. Our basic competition is through lightening vessels and lightering vessels. A VLCC or a large crude carrier will come offshore about 8 miles and transfer its cargo—8 to 50 miles—and transfer its cargo from that ship into a smaller ship that can come into the conventional port.

Mr. BREAUX. None of them is subject to any review by FERC?

Mr. READ. No.

Mr. BREAUX. A ship calling on a port, whether it be east, west, or gulf coast or anywhere—does anybody at that port have to have their fees reviewed by FERC or anybody else?

Mr. READ. Not that I know of. There are some ports that are operated by pipelines that are common carriers.

Mr. BREAUX. Yes, but that is going into a direct pipeline for ultimate consumer consumption, which is a different matter.

Mr. READ. Yes.

Mr. BREAUX. But no ports have to have what they charge to load crude into their port reviewed by FERC that I am aware of.

Mr. READ. No.

Mr. BREAUX. So, in other words, none of your competition has to go through a regulatory review process, other than your operation?

Mr. READ. Correct.

Mr. BREAUX. And it has been a basic time problem?

Mr. READ. Yes.

Mr. BREAUX. The suggestion by, I think it was Mr. Walsh, said he wanted to retain FERC's authority floating out there somewhere and they could always come back in if they thought you were noncompetitive.

What do you think about that suggestion?

Mr. READ. In order to comply with FERC regulations, you have to keep your books in certain order and categories, and so forth, to apply for an evaluation on your facility so that they can establish a return on the evaluation.

This would be an additional burden to us to file the reports that they would be using to determine a valuation.

Mr. BREAUX. His suggestion would be better for you than you currently have, but it is still a great deal of additional requirements that your competitors, in fact, do not have?

Mr. READ. Correct.

Mr. WHITE. The basic problem with it, Mr. Breaux, is that it is an application to FERC to do something. That application could pend for a long, long time before FERC acts. Meanwhile, the flexibility they seek to make a business judgment and a business transaction on the spot or with the telephone is lost until FERC acts.

What the Merchant Marine Committee reported out, I think, solves their problem in that the Interstate Commerce Act is still the basic authority for the future look at FERC, should the Secretary of Transportation ask FERC to look at it if competition does not exist.

I think perhaps the methodology of the reported bill would accomplish not only what they want, but better than their own language.

Mr. BREAUX. Do you still have to, under the bill that is before the committee, operate in the status of a common carrier?

Mr. WHITE. The basic authority under the Interstate Commerce Act is preserved. The exemption for competition under the rather detailed schedule in (b) (1) and (2) is an exception to the basic jurisdiction of the Interstate Commerce Act.

Mr. BREAUX. OK.

Mr. ROE. Any further questions? The gentleman from Minnesota.

Mr. OBERSTAR. Mr. Chairman, Bantry Bay has a deepwater port and similar regulations covering entry of vessels into their territory. It might be useful to review what information is available. There was a committee visit to the Bantry Bay facility back in 1974.

Mr. BREAUX. It blew up.

Mr. OBERSTAR. Yes, I know, but they had a legal regime in effect, and that might serve as precedent here to resolve this international law question which is more a matter of technicality.

We also ought to review with the Coast Guard the jurisdiction over vessels entering the 200-mile economic zone.

Mr. BREAUX. The Coast Guard has certain authorities and the counsel for the Coast Guard did not discuss those matters in any depth in previous testimony. I think that might resolve some questions.

Mr. OBERSTAR. Do you have, Mr. Read, any objection to the recommendation from the Department of Transportation that the Liability Fund not drop below $4 million? The protection was written in for temporary suspension of the fee provided, however, that there are guarantees that the fund does not drop below the $4 million mark.

Mr. READ. We do not object.

Mr. OBERSTAR. But you do have a problem with standby regulatory authority by FERC?

Mr. READ. We think it is unnecessary.

Mr. OBERSTAR. It is a standby authority so that you do not have to go through the hoops. I think the point they are making is that

just as we could not perceive downturn in oil consumption, neither are we able to predict a major resurgence in economic activity.

What they seem to be arguing is that there ought to be some standby authority, even though you do not have to go through the hoops. But if at some further point there should be a need, FERC should be able to reenter the scene.

Mr. READ. I think the existing language in the bill calls for that.

Mr. OBERSTAR. There was no language recommended by the Department of Transportation. I do not know what specifically we have.

Mr. BREAUX. Would the gentleman yield?

Mr. OBERSTAR. I would be glad to yield.

Mr. BREAUX. I think what Mr. Read is pointing out is that in the bill that we have, it says that anytime the Secretary of Transportation feels that they are noncompetitive and there is not competition out there, the only thing that the Secretary has to do is to call up FERC and say they feel this is uncompetitive; "take a look at it."

FERC takes a look at it and if they think they are noncompetitive, they have the authority without any act of Congress to automatically come back in and reinstate the regulatory process, with all the ramifications.

Mr. OBERSTAR. That is standby authority.

Mr. BREAUX. Yes. They could also take the license.

Mr. OBERSTAR. That is all I have.

Mr. ROE. Any further questions? The gentleman from Kentucky.

Mr. SNYDER. If the gentleman would yield out there, as opposed to the witnesses, the difference that I caught from the testimony, John, was that they took the position here that with this legislation, we have wiped out those regulations and then DOT would say, "We need to take a look at them," and they would have to reimpose them, going through the regulatory process of redrafting and submitting, and the Federal Register and all of that, whereas they wanted to keep those regulations in place so that if, in fact, DOT did ask them to take a look, they would not have to do that, but they would be in place.

Now, that is the distinction I drew from their testimony, which I do not think you have drawn from it from what your comment was. I think it is a fine line and we can work that out one way or another.

But I can see their point on that; that we want to keep them in place. They are not in effect, but if they decide they need to do it, then they ought to have to go through this long process and get the comments and all the other things that we have to do when we establish new regulations.

That is the distinction I drew, which I have not connoted from what you have said that you drew.

Mr. READ. They are currently using existing regulations and rules to regulate us which will still be in place at any time in the future. They did not write any specific ones for us.

Mr. ROE. No further questions. We think you have done a good presentation this morning and thank you for being with us.

Mr. READ. Thank you.

Mr. ROE. No further witnesses this morning—I beg your pardon.

Mr. STANGELAND. Mr. Chairman, I would ask unanimous consent that I might submit written questions.

Mr. ROE. The gentleman asks unanimous consent that he may submit additional questions to the witnesses.

Mr. BREAUX. Will that be for everyone?

Mr. ROE. For everyone. No objection; so ordered.

No further witnesses this morning. We want to thank you very much, ladies and gentlemen. The subcommittee stands adjourned.

[Whereupon, at 11:35 a.m., the subcommittee was adjourned.]

[The following were received from Mr. Read:]

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March 8, 1984

Congressman Arlan Stangeland
Congress of the United States
House of Representatives
Washington, DC 20515

Dear Congressman Stangeland:

The following are LOOP's responses to the questions transmitted with your letter of February 22, 1984:

Question 1--Mr. Read, this morning's testimony has me a little confused about exactly when LOOP began operation. Your statement indicates that LOOP began operation in December, 1981. Mr. deGravelles' testimony, on the other hand, indicates that LOOP went operational in May of 1981. Could you help clear up this discrepancy for me?

LOOP's Response--LOOP filed its initial tariff with the Federal Energy Regulatory Commission in November 1981 and commenced common carrier operation in December 1981. The December 1981 date is therefore given as the date upon which LOOP commenced commercial operation. From May 5, 1981 up to the date upon which commercial operation commenced, LOOP was engaged in test and checkout operations which entailed the offloading of tankers. The Department of Transportation, Federal Energy Regulatory Commission and Louisiana Offshore Terminal Authority were kept advised of the status of these test activities and LOTA's environmental oversight of LOOP's operations began when the test and checkout operations commenced on May 5, 1981.

Question 2--In your testimony you indicate that, since December 1981, LOOP throughput has averaged 300,000 barrels per day, which is far below the 700,000 barrel per day break-even point. For each of the months that LOOP has been in operation, would you please provide the Committee with a summary of the volume of oil handled by LOOP and your operating profit or loss for that month?

LOOP's Response--LOOP's estimated 700,000 BPD break-even point is based on an assumed average per barrel tariff of $.49. Since LOOP has a dual tariff structure, the actual average tariff and storage charges will vary significantly from month

to month, and in some months we will achieve a "profit" on less than 700,000 BPD, while in other months we might suffer a "loss" despite handling more than 700,000 BPD. The "net from operations" figures shown on Annex I attached represent the difference between total revenues received for transportation and storage of crude oil and the actual cost of generating those revenues. This treatment does not take into account the capitalization of net expenses prior to June 1983, nor do any of the results prior to June 1983 take into account any costs for depreciation of capital facilities.

Question 3--In your summary statement you indicated that the Act's requirement for bilateral agreement was based on international law as it existed in 1974 and that developments since then have made this requirement unnecessary. Would you describe a little more fully what you mean by this statement? What was the nature of international law in 1974 that appropriately called for the formation of bilateral agreements? How has that international law changed over the course of the past ten years? What developments have occurred since 1974 which you feel eliminate the need for bilateral agreements?

LOOP's Response--In 1974, the only international agreement dealing directly with the right of a coastal state to construct and operate installations on its continental shelf was the Geneva Convention on the Continental Shelf (15 U.S.T. 471, April 29, 1958). Under that Convention, it was clear that the coastal state could construct and take all measures necessary to protect

> installations necessary for . . . exploration [of the shelf] and exploitation [of the shelf's resources]."

However, since LOOP's installation is not for the purpose of exploring for or exploiting shelf resources, the Geneva Convention did not provide a clear jurisdictional basis for constructing, operating or protecting it. The bilateral agreement requirement was a reasonable response to this jurisdictional uncertainty.

Since 1974, the jurisdictional uncertainty which led to adoption of the bilateral agreement requirement has been virtually eliminated. The United Nations Law of the Sea Convention*/ would expressly authorize a coastal state to

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*/ Although the U.S. is not a party to this Convention, its provisions regarding the Exclusive Economic Zone are reflective of customary international law.

establish an "exclusive economic zone" [EEZ] extending up to two hundred miles from its coast. Within such an EEZ, the coastal state has the exclusive right to regulate construction, operation and use of installations and structures for all economic purposes. President Reagan established a United States EEZ, by Proclamation, on March 10, 1983 (Proclamation No. 5030). The Proclamation states that

> Within the exclusive economic zone, the United States has, to the extent permitted by international law, . . . jurisdiction with regard to the establishment and use of . . . installations and structures having economic purposes. . . .

Accordingly, it is our view that developments in international law since 1974 have rendered the bilateral agreement requirement unnecessary. Further, in our opinion, continued imposition of that requirement would be inconsistent with the assertion of exclusive jurisdiction set forth in the President's EEZ Proclamation.

Question 4--On page 5 of your written statement, you refer to a recent FERC decision on the "Williams" case which evidently stresses that present regulated ratemaking procedures are not in the public interest where market competitive forces can be used. I am not familiar with the details of this decision. Could you please summarize for us what the factual background of the case was and what issues FERC considered in the case? It would also be most helpful to the Committee if you could provide us for our hearing record a copy of the Williams decision.

LOOP's Response--A copy of the FERC Opinion 154 on the Williams case is enclosed. Following that Opinion is a seven-page FERC news release which discusses the case and the ruling.

Question 5--On page 7 of your written statement, you indicate that the two-cent-per-barrel fee adds almost ten percent to the cost of using a deepwater port. For a "typical" barrel of oil, would you please break down for the Committee the cost components of the price of that oil? In other words, how much is crude cost, how much is transportation cost, how much is deepwater port service cost, etc.?

LOOP's Response--Since LOOP's tariff rates are established on the basis of the need to meet competition, we have not done any detailed analyses of the cost of LOOP's service as a percent of the total landed cost of the average barrel of

oil. The statement on page 7 of our written statement to which you refer, is based on the following analysis. LOOP's basic tariff charge for offloading from a tanker, transporting the crude petroleum to our storage facility and delivering it out for further transportation is approximately $.20 per barrel. This rate has been established on the basis of competitive conditions presently existing in the Gulf of Mexico and cannot be increased without risking substantial loss of business. The two-cent-per-barrel fee, which is not assessed on our competitors, amounts to about 10 percent of this basic tariff rate.

Question 6--Section 3 of H.R. 2353 provides that a licensed deepwater port shall act as a common carrier except where the license is "subject to effective competition." Who should make this determination, in your opinion? How should it be made, that is, what criteria should be used to decide whether or not "effective competition" exists?

LOOP's Response--Under the Deepwater Port Act, the Department of Transportation acts as the federal government's "lead agency" in the authorization, general oversight and regulation of a deepwater port. The Department is not, however, required to directly carry out economic regulatory functions or otherwise to unnecessarily duplicate functions which properly fall within the expertise and cognizance of other government agencies.

Consistent with this approach, section 8(c) of H.R. 2353 would require the Secretary of Transportation, whenever he has "reason to believe" that the licensee is no longer "subject to effective competition," to either

1. Request the Federal Energy Regulatory Commission to initiate an investigation to determine whether to reimpose tariff regulation;

2. Request the Attorney General to enforce the section 8(a) common carrier obligations; or

3. Proceed to revoke or suspend the license.

Thus, under H.R. 2353, the Secretary of Transportation would be responsible for making the simple threshold determination as to whether there is "reason to believe" that effective competition has ceased to exist. After that determination is made, the final decision as to whether rate regulation should be reinstituted could be made by FERC, the

Courts or the Secretary at the Secretary's option. Thus the Secretary is not required to directly exercise substantial economic regulatory authority but may call upon the agency with greatest regulatory expertise or upon the Courts to carry out that function.

As to criteria to be utilized in deciding whether there is an absence of "effective competition," we believe that the legal question posed is whether the cost effectiveness and other advantages of deepwater ports become so substantial as to give the Port an economic monopoly position of the sort that was expected when the Act was originally passed. The concept of economic monopoly is well understood in antitrust law and this criterion should be more than adequate for purposes of this legislation. In any case, as was stated by the Department of Transportation before the Merchant Marine Committee, the circumstances which might lead to a finding of absence of effective competition cannot reasonably be expected to occur at any time in the foreseeable future.

Question 7--Mr. Read, the Department of Transportation has testified that, before it could support enactment of H.R. 2353, four amendments are necessary to the bill. Have you examined these amendments? What is your position on each of the suggested DOT amendments?

LOOP's Response--LOOP's position regarding the four amendments proposed by the Department of Transportation is as follows:

Amendment No. 1--the section 2(c) amendment--is unnecessary and confusing.

As stated in the Senate Report on the comparable provision of S. 1546

> The Committee intends that approval of the amendment, transfer or reinstatement be subject to the Secretary of Transportation's finding that the approval will not affect the continuing fulfillment of the essential factual findings upon which the license was issued.

Since the licensee's (transferee's) financial and other qualifications are matters as to which such "essential factual findings" have been made and must be continuously fulfilled, there is no need to specifically refer to these issues (and not the other essential findings) in the section. The

meaning of the proposed language "as modified by subsequent events" is obscure in light of the fact that the findings referred to are statutory requirements which must be met through the life of the license. DOT's proposed amendment should be rejected.

Amendment No. 2--the section 8 amendment--will require unnecessary expenditure of federal and private funds and is detrimental to the purposes of the Act.

By inserting a requirement for a FERC finding that LOOP is subject to effective competition, DOT would require a burdensome and time-consuming regulatory proceeding to determine a fact which DOT, FERC and all who have testified on this bill have acknowledged. LOOP is subject to effective competition and is expected to continue to be so throughout the foreseeable future. The amendment could be rejected purely on the basis that it calls for a useless expenditure of government and private effort.

Perhaps more serious, however, is that if the amendment were adopted and FERC made the required finding, there would be no clear statutory basis for reimposing rate regulation if, at some point in the future, LOOP achieves a monopoly position. This clearly is not the intent of either DOT or the Committee. The amendment is ill conceived and should be rejected.

Amendment No. 3--the section 4(a)(2) amendment--is a technical clarification of the existing Act and is probably unobjectionable.

Amendment No. 4--the section 19 amendment--is a significant improvement over the Act as it presently exists and would create a consent regime which may not create serious impediments to LOOP's operations. We are not in a position to comment on the public policy implications of allowing states to "opt out" of the consent regime. The existing language of H.R. 2353 is certainly acceptable to LOOP without amendment.

Question 8--Mr. Read, what authority do you cite in the Deepwater Port Act as it currently exists, that gives FERC and/or DOT the standby power to reimpose rate-setting requirements (assuming H.R.2353 were to become law in the form reported by the Merchant Marine Committee) without the need for DOT's suggested amendment to section 3 of H.R. 2353?

LOOP's Response--As noted above, in the response to question 7, DOT's amendment to section 3 appears to eliminate, or at least cast substantial doubt on, the standby power to reimpose rate regulation which would be clearly provided by H.R. 2353. The mechanism for reimposition of rate regulation which would exist if DOT's proposed amendment is not adopted is described in detail in the response to question 6 above.

Question 9--Mr. Read, would you please provide for the Committee a history of the number of spills that have occurred at LOOP and, for each incident, the approximate amount of oil spilled and necessary cleanup costs and activities that were required in response to the spill?

LOOP's Response--Enclosed is a copy of our letter on this subject recently sent to Chairman Roe.

Please feel free to contact us should you require further information.

Yours very truly,

William B. Read

WBR:mea
Enclosures

cc: Joseph A. Italiano
Public Works Committee Editor

Chairman Robert Roe

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February 24, 1984

Representative Robert A. Roe
Chairman, Water Resources Subcommittee
Committee on Public Works and Transportation
2165 Rayburn House Office Building
Washington, DC 20515

Dear Representative Poe:

At Wednesday's hearing on the Deepwater Port Act Amendments, I was asked several questions. LOOP's answers to those questions follow.

Question 1: How many oil spills have occurred at the LOOP marine terminal? What has been the cost associated with the cleanup of the spills?

Answer: For the year 1982, LOOP experienced a total of thirty-one (31) offshore oil spills, of which the largest was approximately thirty-eight (38) barrels. The total volume of oil spilled offshore in 1982 was approximatel 140 barrels, which represents only 0.000001 percent of the 101 plus million barrels of crude oil unloaded by LOOP.

For 1983, LOOP experienced fourteen (14) offshore oil spills and seven (7) of these were 5 gallons or less in magnitude. The largest spill was approximately 400 barrels and resulted when a vessel broke away from its mooring at our SPM in heavy seas and the hose connected to the ship split in two. The total volume spilled offshore in 1983 was approximately 438 barrels which represents only 0.000003 percent of the 140 plus million barrels of crude unloaded by LOOP.

So far in 1984, LOOP has had one (1) offshore oil spill of 5 barrels, which represents only 0.0000003 percent of the 16 million plus barrels of oil unloaded at LOOP.

LOOP maintains 2.6 million dollars of oil spill response and cleanup equipment ready to respond to both onshore and offshore spills. This includes 4,000 feet of offshore oil boom on two hydraulic oil boom reels stored on the Marine Terminal Platform and a fully dedicated offshore oil spill cleanup vessel equipped with two Offshore Devices Skimming Barrier Systems and 1,000 feet of offshore oil boom on two hydraulic reels. Additionally, two portable Offshore Devices Skimming Barrier Systems, one portable Walosep Offshore Skimming System and 12,000 feet of additional offshore oil boom are stored at LOOP's Small Boat Harbor facility, ready for rapid response to an offshore spill.

Many offshore spills experienced by LOOP have occurred in the winter months during high sea conditions, which has prevented any response and cleanup, but which at the same time has aided in the rapid dissipation of the oil. LOOP has responded to three spills which were large enough to attempt a cleanup at a total cost of approximately $5300. To maintain our rapid response and cleanup capability, LOOP conducts monthly offshore oil spill drills and once a year a major joint offshore drill with the United States Coast Guard Gulf Strike Team at an annual cost of approximately $20,000.

Question 2: What countries have not signed bilateral agreements? Of the 264 tankers which cannot call at LOOP for lack of a bilateral agreement, how many are VLCCs (over 160,000 DWT)?

Answer:

Country	LR-2 70,000 DWT to 160,000 DWT	VLCC over 160,000 DWT	Total
Algeria	4	1	5
Australia	3	0	3
Brazil	5	5	10
Bulgaria	4	0	4
India	13	2	15
Iran	0	5	5
Iraq	8	2	10
Japan	55	81	136
Kuwait	5	6	11
Libya	6	1	7
Mexico	1	1	2
Morocco	1	0	1
Nigeria	0	1	1
North Korea	0	2	2
Pakistan	1	0	1
Peoples Republic of China	2	0	2
Peru	1	0	1
Philippines	2	1	3
Poland	6	0	6
Portugal	2	0	2
Qatar	1	0	1
Romania	5	1	6
South Korea	4	4	8
Taiwan	3	1	4
Turkey	7	1	8
United Arab Emirates	1	0	1
Uruguay	1	0	1
U.S.S.R.	6	0	6
Yugoslavia	2	0	2
Total 29 Countries	149	115	264

Yours very truly,

William B. Lead

WBR:ksr

ANNEX I

LOOP INC.
Operating Summary
1/82 - 1/84

Month	M BPD	Net From Operations $M
1982		
January	254	(920)
February	209	(3,767)
March	213	(4,979)
April	299	(4,544)
May	285	(3,728)
June	144	(6,035)
July	349	(2,186)
August	230	(3,263)
September	274	(2,816)
October	297	(2,777)
November	415	(788)
December	346	(4,750)
Average 3315/12	276	(40,553)
1983		
January	289	(1,991)
February	183	(4,044)
March	177	(4,268)
April	279	(3,322)
May	329	(2,653)
June	393	(6,737)
July	586	2,194
August	452	(704)
September	536	(1,354)
October	503	(563)
November	418	(1,119)
December	471	313
Average 4616/12	385	(24,248)
1984		
January	338	272